PAPERS

RELATING TO

BENGAL SECRETARIAT LIBRARY

THE WORKING AND AMENDMENT OF ACT X OF 1859

(AN ACT TO AMEND THE LAW RELATING TO THE RECOVERY OF RENT IN THE PRESIDENCY OF FORT WILLIAM IN BENGAL).

VOLUME II.

Compiled in the Revenue and Agricultural Department.

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BY ORDER OF THE GOVERNMENT OF BENGAL FORWARDED

PAPERS

RELATING TO

THE WORKING AND AMENDMENT OF ACT X OF 1859

(AN ACT TO AMEND THE LAW RELATING TO THE RECOVERY OF RENT IN THE PRESIDENCY OF FORT WILLIAM IN BENGAL).

BENGAL SECRETARIAT LIBRARY

No. 3611, dated Fort William, the 21st September 1863.

From—The Hon'ble A. EDEN, *Secretary to the Government of Bengal, Revenue Dept.*,

To—*The Secretary to the Government of India*, HOME DEPARTMENT.

Letter from the Honourable A. Eden, Secretary to the Government of Bengal, No. 3611, dated the 21st September 1863.

Leg. Pros., 12th October 1863, Nos. 23—25.

No. 23.

IN the recent important Judgment of the High Court in the case of Mr. James Hills *versus* Isher Ghose, delivered by the Chief Justice and Mr. Justice Sumbhoonath Pundit, in which the Court have decreed the full amount of the plaintiff's claim for enhanced rent at the rate of one rupee a beegah, the Court conclude with the following observations :—

"It is not for us in this place to comment upon the Acts of the Legislature or to suggest amendment of the law. We have merely to administer it as we find it. But we think we may fairly point to this case as an example of the difficulties which have been created by some of the provisions of Act X of 1859, and of the vast amount of litigation, harassing both to land-owners and ryots, which must necessarily arise unless that Act be amended."

2. The Lieutenant-Governor has recently received from the Board of Revenue a report on the working of Act X of 1859 and Act VI (B.C.) of 1862, and has now under his consideration the suggestions that have been made for the further amendment of the law relating to the recovery of rent in the Lower Provinces. As the hon'ble and learned Chief Justice was a Member of the Legislative Council when Act X was passed, and has since enjoyed the most favourable opportunities of judging of its effect on the relations between landlord and tenant, of the difficulties it has created, and of the tendency of its provisions to promote litigation, it would most materially assist the Lieutenant-Governor in forming a judgment on this extremely important question if he were placed in possession of Sir Barnes Peacock's views on the subject, and I am accordingly desired to request that (if the Hon'ble the President in Council see no objection) he may be asked to favour the Government with a report.

3. There is one point on which a full statement of the views of the Hon'ble Chief Justice, and of the reasons on which they are based, would be of great value. In the Judgment above referred to the Court makes the following remarks :—

"It is a mistake to suppose that such a ryot" (*i. e.*, a ryot having a mere right of occupancy) "has any interest in the land which gives him a right to a share of the rent. He has merely a right to occupy the land in preference to any other tenant so long as he pays a fair and equitable rent. He may or may not, according to circumstances, be entitled on account of increased expenditure to a share of the increase of proceeds, but he is not entitled to a share of the net proceeds or rent of the land."

4. Now this exposition of the law apparently leaves no room for distinction between a fair and equitable rent and a rack-rent, that is to say, the highest rent that any one may be found willing to give for the land, and strips the ryot having a right of occupancy of every advantage over a mere tenant-at-will (as defined in Section 8, Act X of 1859), except the shadowy and attenuated right to occupy his land in preference to any other tenant, provided

tter from the onourable A. den, Secretary to e Government of engal, No. 3611, ted the 21st ptember 1863.

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No. 23.

he is willing to give as high a rent as any one else may offer for it. Or it may perhaps mean that the fair and equitable rent at which a ryot having a right of occupancy has a preferential right to hold the land is not the highest rent that can be obtained by competition, but a rent to be determined by judicial enquiry and decision with reference to Mr. Malthus' definition quoted by the Court in a previous Judgment in the same case.

5. In either case the law as it stands does not seem to be in accordance with the received theory of land rent in India, with the whole course of legislation down to 1859, or with the intention of those who passed Act X of that year. The nature of land rent in India is defined in several of the Regulations of 1793. It is there stated that "by the ancient law of the country the ruling power is entitled to a certain proportion of the produce of every beegah of land (demandable in money or kind according to local custom) unless it transfers its right for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between *such proportion of the produce* and the sum payable to the public while he continues to discharge the latter."* Now this proportion of the produce to which the Government is entitled is that which in the language of the Regulations is called the rent.

* Preamble to Regulation XIX, 1793. See also the Preambles to Regulations XXXVII and XLIV of the same year.

6. The zemindar's title to demand this rent was derived entirely from the Government in like manner as the putneedar's title is derived entirely from the zemindar. As the putneedar or other inferior and intermediate holder is not entitled to demand from the ryots a higher rent than the zemindar is entitled to demand from them, so the zemindar was not entitled to demand from the ryots a higher rent than that which the Government could legally demand. The zemindar's proprietary right in the land was neither more nor less than that which was transferred to him by Government in perpetuity under the settlement subject to the condition of discharging the public revenue. Apart from, or in excess of, this right, he had no interest in the soil, and the same law or custom which limited the right of Government to a certain proportion of the produce was a limit to the right of the zemindar and of all who derive from him. The Government, indeed, could not, without an act of confiscation, alienate to the zemindar a right to demand from a ryot having a right of occupancy more than that proportion of the produce to which the ruling power was entitled.

7. There were but three classes of ryots known to the law, *viz.*,—

1*st*—ryots having a right of occupancy at fixed rents;
2*nd*—ryots having a right of occupancy at variable rents to be determined by the Civil Court according to local usage;
3*rd*—ryots having no rights of occupancy except as farmers under specific engagements, or as tenants-at-will.

The first two of these classes were usually called khood-kasht ryots, or ryots cultivating their own fields, the one at fixed and the other at variable rates. It is only with the second of these two that we have now to do, but they form by far the most numerous class of the agricultural community, and would appear, according to the ancient law of the country, to have a right under certain circumstances to something more than the wages of their labor and the profits of their stock. If the customary share of the produce to which the Government was entitled fell short of the amount which might be obtained as rent either by competition or by the application of a scientific principle, the difference, or, in other words, a portion of the net proceeds, belonged of right to the ryot.

8. The amount of rent which a ryot of the second class might be legally required to pay does not appear to depend upon what the land is worth to cultivate, or upon the excess of the value of the gross produce over the wages of the ryot and the profits of his stock, but rather upon local usage. The proportion varies in different localities, but where rents are taken in kind it seems never to have exceeded one-half the produce, and rarely to have been less than two-fifths, though two-sevenths is mentioned in Regulation LI, 1795, as a rate prevailing in Benares. Where rents are taken in money the amount

necessarily varies with the value of the produce and is subject to a large deduction on account of the transfer of the risk of bringing the crop to market from the landlord to the ryot. It seems to have been expected by the Legislature in 1793 that in time proprietors of land and the ryots would find it for their mutual advantage to enter into engagements for a specific sum, that is to say, that money rents would universally take the place of rents in kind, and it was provided that pottahs should be given at the established rates, and that in case of dispute the rate of rent should be determined by the Civil Court "according to the rates established in the pergunnah for lands of the same description and quality as those respecting which the dispute may arise." It was also provided that in the event of a sale for arrears of revenue the purchaser of land should not be allowed to require ryots to take out new pottahs at higher rates than "the established rates of the pergunnah for lands of the same quality and description."

Regulation VIII, 1793, Section 56.

Letter from the Honourable A Eden, Secretary to the Government of Bengal, No 3611, dated the 21st September 1863.

Leg. Pros., 12th October 1863, Nos. 23–35

No. 23.

9. Again, it was declared in Regulation VIII, 1793, that in Bengal no proprietor of land should cancel the pottahs of the khood-kasht ryots (except in case of collusion) unless the rents paid by them within the last three years had been reduced below the *nerikhbundy* rate of the pergunnah, or unless a general measurement of the pergunnah should be made for the purpose of equalising and regulating the assessment. And by Regulation V, 1812, it was enacted that, as the pergunnah rates had become very uncertain, the amount of rent demandable by auction-purchasers of land should be determined by that criterion only where known established pergunnah rates exist, and that where no such established rates are known, pottahs should be granted at the rate payable for land of a similar description in the places adjacent, or, if the lands sold consist of an entire village or other local division, at rates not exceeding the highest rate paid for the same land, in any one year within the three last preceding years.

10. All this legislation seems inconsistent with any theory of rent except that laid down in the Preamble of the Act of 1793, namely, that rent is the proportion of the produce to which the ruling power is entitled, and that the rate is to be determined with reference to that proportion according to local custom and usage. Whatever may be the true legal construction of Act X, 1859, it seems so probable as to be almost certain that the framers of that measure did not mean to impose upon the ryot having a right of occupancy a greater burden than he had to bear before, or to subject him to the payment of rent which, whether regulated by competition or by the application of a scientific rule, might be in excess of what he was liable to pay under the ancient law. If, however, such be the legal effect of the Act, it can hardly be doubted that the rights of a large class of ryots have been materially abridged, and that in any attempt that may be made at further legislation this defect should be remedied. Having regard to the provisions of Section 8, Regulation I, 1793, it may be right to fix by law the proportion of the produce to which the Government, or the landholder standing in the place of the Government, is entitled, and to leave to either party, if they cannot both agree on a fixed money rate, to pay or to receive the rent in kind: it may be still more advantageous to adopt some method of commutation whereby the demand of the landlord shall be fixed once for all and for ever; but it appears equally unjust and impolitic either to abandon the ryot having a right of occupancy to unrestricted competition, or to keep the country in a constant ferment by leaving it to the Courts to decide—annually it may be—at the suit either of the landlord or of the tenant, what is the fair and equitable rent of every field, and to decide this by a process which involves, first, an enquiry which cannot by any possibility be satisfactory or conclusive, and then the application of a principle which, however sound as accounting for the existence of rent and exhibiting the natural law by which its amount is ordinarily regulated, was never regarded even by political economists as a rule by which *á priori* the amount of rent could, under any circumstances, be accurately or safely determined.

11. The question as to what constitutes a right of occupancy, and whether in this respect the Act of 1859 has not conferred the right on a large class of ryots who did not previously enjoy it, is one of no less importance, but it is not raised in the Judgment of the High Court.

Letter from E. C. Bayley, Esq., Secretary to the Government of India, No. 6452, dated the 12th October 1863, to Bengal.

Leg. Pros., 12th October 1863, Nos. 23—25.

No. 24.

No. 6452, dated the 12th October 1863.

From—E. C. BAYLEY, Esq., *Secretary to the Government of India*, HOME DEPT.,

To—*The Secretary to the Government of Bengal.*

IN reply to your letter No. 3611, dated 21st ultimo, I am directed to state, for the information of the Lieutenant-Governor, that the Government of India proposes to address the High Court separately on the subject of that part of its recent judgment in the case of Mr. James Hills *versus* Isher Ghose, which is quoted in your first paragraph, and to consult the Court as to the points on which it considers that Act X of 1859 should be amended.

2. On receiving a reply from the High Court, the Government of India will again address the Government of Bengal. Pending this further communication, it is of course desirable, I am to add, that His Honour should not invite or enter into any discussion with the High Court on the subject either of Act X of 1859, as amended by the Bengal Act of last year, or of the judgment of that Court in the case above mentioned.

Letter from E. C. Bayley, Esq., No. 6453, dated the 12th October 1863, to the High Court.

No. 25.

No. 6453, dated the 12th October 1863.

From—E. C. BAYLEY, Esq., *Secretary to the Government of India*, HOME DEPT.,

To—*The Offg. Registrar of the High Court of Judicature at Fort William in Bengal.*

THE attention of the Honourable the President in Council has been drawn to the observations marginally quoted, with which the High Court conclude their recent judgment in the important case of Mr. James Hills *versus* Isher Ghose, and I am directed by the President in Council to request that the High Court will, at an early opportunity, be good enough to favour the Government of India with their opinion as to the points in which Act X of 1859 appears to the Court to require amendment, and with a full explanation of the difficulties which are described as arising from certain of its provisions.

> "It is not for us in this place to comment upon the Acts of the "Legislature, or to suggest amendment of the law. We have "merely to administer it as we find it. But we think we may "fairly point to this case as an example of the difficulties which "have been created by some of the provisions of Act X of 1859, "and of the vast amount of litigation, harassing both to land-"owners and ryots, which must necessarily arise unless that Act "be amended."

Letter from the Honourable A. Eden, Secretary to the Government of Bengal, No. 1256T., dated the 19th October 1863.

Leg. Pros., 3rd November 1863.

No. 1.

No. 1256T., dated Bhaugulpore, the 19th October 1863.

From—*The* Hon'ble A. EDEN, *Secretary to the Government of Bengal*,

To—*The Secretary to the Government of India*, HOME DEPT.

WITH reference to your letter No. 6452, dated the 12th instant, the Lieutenant-Governor desires me to assure the Honourable the President in Council, that he had no intention to invite or enter into any discussion with the High Court on the subject, either of Act X of 1859, as amended by the Bengal Act of last year, or of the judgment of that Court in the case referred to in your letter.

2. The Lieutenant-Governor regrets that, in submitting to the Government of India an expression of his views on the very important subject of the relations between landlord and tenant in the matter of rent, and in requesting that, if the Honourable the President in Council saw no objection, the Chief Justice might be asked to favour the Government with a report on the difficulties created by the present law as stated in the judgment, he should have led the Government of India to suppose that such a caution was necessary.

3. The Lieutenant-Governor did not call in question the correctness of the judgment of the High Court; but, assuming the judgment to be correct, his object was to show that Act X of 1859 involves a departure from principles which governed previous legislation on the subject, and to point out that, if further legislation were thought expedient, it was most probable that those principles, which the Lieutenant-Governor believes it was the intention of the Legislature in 1859 to confirm, not to abandon, would have to be reverted to.

No. 1255, dated the 11th April 1864.

Letter from H. T. Prinsep, Esq., Registrar of the High Court, No. 1255, dated the 11th April 1864.

From—H. T. PRINSEP, Esq., *Registrar of the High Court of Judicature at Fort William in Bengal,*

To—*The Secretary to the Government of India,* HOME DEPT.

Leg. Pros., 23rd May 1864, Nos. 9—12.

No. 9.

I AM directed by the Chief Justice to enclose a printed copy of the judgments of the Chief Justice and Mr. Justice Sumbhoonath Pundit upon the application for a review of Judgment in the case of James Hills *versus* Isher Ghose, together with printed copies of Minutes recorded by the same Judges, in compliance with the request of the Honourable the President in Council conveyed in your letter No. 6453, dated the 12th October 1863.

2. These Minutes would have been recorded at an earlier period, but for the application for a review of Judgment; and it was thought proper to wait until the entire question should have been disposed of after a full argument upon that application.

3. The Minutes and Judgments have been laid before the other Judges of the High Court, in order that they may express their opinion as to the points (if any) in which Act X of 1859 may seem to them to require amendment. Their opinions, when expressed, will be forwarded to you to be laid before His Excellency the Governor General in Council in connection with this subject.

17th March 1864.

Judgment of the High Court of Judicature, dated the 17th March 1864, in the case of James Hills *versus* Isher Ghose.

No. 10.

High Court of Judicature, Appellate Jurisdiction.

PRESENT:

The Hon'ble Sir Barnes Peacock, Kt., *Chief Justice,*

AND

The Hon'ble Sumbhoonath Pundit, *Puisne Judge.*

Case No. 742 of 1863 under Act X of 1859.

Petition for review of Judgment passed on the 2nd September 1863 by the Honourable Sir Barnes Peacock, Kt., *Chief Justice,* and the Honourable Sumbhoonath Pundit, *Puisne Judge,* in Special Appeal No. 972 of 1863.

Isher Ghose (*Defendant*), *Respondent,* Petitioner,

versus

Mr. James Hills (*Plaintiff*), *Appellant,* Opposite party.

Mr. W. A. Montriou and Mr. R. E. Twidale, *for Petitioner.*

Chief Justice.—THIS was an application for a review of the Judgment delivered in the Special Appeal No. 972 of 1863, in a suit in which Mr. James Hills was the plaintiff and Isher Ghose the defendant.

The suit was brought to recover rent for the year 1268 B.S. at an enhanced rate, upon the ground that the value of the produce had increased otherwise than by the agency or at the expense of the ryot.

The rent formerly paid was at the rate of five annas four pie per beegah.

The plaintiff, by a notice served before the expiration of the year 1267, claimed to enhance the rent to one rupee per beegah.

The case in the first instance was tried before the Native Deputy Collector, who awarded to the plaintiff the full amount claimed. The case was appealed to the Zillah Judge, who modified the decree of the Deputy Collector, and fixed the rent at ten annas eight pie a beegah.

Upon special appeal to this Court, the case was remanded upon the ground of an error in point of law, and upon the second trial the same learned Judge awarded nine annas per beegah.

Upon appeal against the last mentioned decision, this Court, after a careful consideration of the case and of the arguments which had been adduced in support of the appeal, considered that, according to the facts found by the Judge (in the nature of a special verdict) one rupee and three annas a beegah was a fair and equitable rent for the matan lands, and decided that the plaintiff was entitled to enhance the rent for those lands to the full amount claimed by his notice, *viz.*, one rupee per beegah.

When the case was first argued upon appeal before this Court, the service of the notice to enhance was admitted, and it was also admitted that the

Judgment of the High Court, dated the 17th March 1864, in the case of James Hills versus Isher Ghose.

Leg. Pros., 23rd May 1864, Nos. 9—12.

No. 10.

defendant was a tenant having a right of occupancy. The only question that was then made, or which has been made before this Court from first to last until a review of judgment was applied for, was whether the amount fixed by the Lower Appellate Court was fair and equitable, and if not, what was a fair and equitable rent.

Mr. Montriou, who appeared on behalf of the defendant, for the first time only upon the application for a review of judgment, commenced his argument by calling the attention of the Court to the statement of the defendant that he had paid Rs. 5-4 per beegah for the last 30 years.

If that fact had been proved at the trial, the defendant by virtue of the provisions of section 4, Act X of 1859, would have been entitled to a presumption in his favour that the land had been held at that rent from the time of the permanent settlement, unless the contrary had been shown, or unless it had been proved that such rent was fixed at some later period; and if it had been found that the land had been held at a fixed rate of rent from the time of the permanent settlement, he would have been entitled under section 3 of the Act to continue to hold at that rent, and no question could have arisen as to what was a fair and equitable rate.

No claim was ever set up on behalf of the defendant, in any stage of the proceedings, of a right to hold at a fixed rate of five annas four pie per beegah, upon the ground that he had held at that rate from the time of the permanent settlement.

When, in the course of argument, I asked the learned Counsel, Mr. Montriou, whether he now contended that the Court below ought upon the evidence to have found that the land had been held at a fixed rate from the time of the permanent settlement, he admitted that the defendant Isher Ghose was not a mocururee ryot; and he further stated that the defendant would rather not hold at a fixed rent.

The learned Counsel in an elaborate argument proceeded to consider what were the status and rights of a ryot before the permanent settlement, and what they were afterwards. But he failed to give any exact definition of such status and rights except that they were "Mámúlí."

It is not necessary to consider what were the rights of the ancient hereditary ryots, or even of the ryots at the time of the permanent settlement, for it has not been found in this case that the holding of the defendant, or of those through whom he claims, commenced before the date of the permanent settlement. There was no finding of the Lower Court to that effect; and there was no appeal preferred upon the ground that there ought to have been such a finding. Indeed, even if the defendant's own statement be accepted, there is nothing to show that his holding commenced more than 30 years ago.

We were told that the just claims of the ryots were altogether overlooked and forgotten at the time of the permanent settlement, and I was referred by the learned Counsel, in the course of his argument, to a book published in Calcutta in 1832, which he put into my hands, and which I have since read, entitled "A Memoir on the Land Tenure and Principles of Taxation in Bengal, by a Civilian." But it is not because the ryots of that day may have had rights which were then overlooked, and which they may consequently have been unable to prove in modern times, that ryots whose holdings commenced since the date of the permanent settlement are to be held entitled to rights which never belonged to them, and to be put on a par with the ancient hereditary ryots.

The learned Counsel for the defendant laid it down as a familiar doctrine with Jurists, that Primitive Societies deal with status rather than with contract; and he referred to the authority of the well-known Honourable and learned author of "Ancient Law." It appears to me, however, that the condition and rights of those ryots, at least whose tenures commenced since the date of the permanent settlement, depend not upon status, but upon contract, and upon the Laws and Regulations which have been specifically enacted. The evils which the permanent settlement was intended to remedy are set forth in the 6th Article of the Proclamation of the 22nd March 1793 (see Regulation I of that year, section 7), of which I will read the following short extract:—

"The Governor General in Council trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves

in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruits of their own good management and industry, and that no demand will ever be made upon them or their heirs or successors for an augmentation of the public assessment in consequence of the improvement of their respective estates."

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The benefits intended to be secured by the new system, and the necessity for depriving the revenue authorities of their judicial powers, were pointed out in the preamble to Regulation II of 1793, which may be read with much advantage. It runs as follows:—

"In the British territories in Bengal, the greater part of the materials required for the numerous and valuable manufactures, and most of the other principal articles of export, are the produce of the lands: it follows that the commerce, and, consequently, the wealth of the country, must increase in proportion to the extension of its agriculture. But it is not for commercial purposes alone that the encouragement of agriculture is essential to the welfare of these Provinces. The Hindoos, who form the body of the people, are compelled, by the dictates of religion, to depend solely upon the produce of the lands for subsistence; and the generality of such of the lower orders of the Natives as are not of that persuasion, are, from habit or necessity, in a similar predicament. The extensive failure or destruction of the crops that occasionally arises from drought or inundation, is in consequence invariably followed by famine, the ravages of which are felt chiefly by the cultivators of the soil and the manufacturers from whose labours the country derives both its subsistence and wealth. Experience having evinced that adequate supplies of grain are not obtainable from abroad in seasons of scarcity, the country must necessarily continue subject to these calamities, *until the proprietors and cultivators of the lands shall have the means of increasing the number of the reservoirs, embankments, and other artificial works, by which, to a great degree, the untimely cessation of the periodical rains may be provided against, and the lands protected from, inundation;* and as a necessary consequence, the stock of grain in the country at large shall always be sufficient to supply those occasional but less extensive deficiencies in the annual produce, which may be expected to occur, notwithstanding the adoption of the above precautions to obviate them. *To effect these improvements in agriculture, which must necessarily be followed by the increase of every article of produce, has accordingly been one of the primary objects to which the attention of the British Administration has been directed in its arrangements for the internal Government of these Provinces. As being the two fundamental measures essential to the attainment of it, the property in the soil has been declared to be vested in the landhoders, and the revenue payable to Government from each estate has been fixed for ever. These measures have at once rendered it the interest of the proprietors to improve their estates, and given them the means of raising the funds necessary for that purpose.* The property in the soil was never before formally declared to be vested in the landholders, *nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government.* With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the ryots or tenants for each beegah of land in cultivation, of which, after deducting the expenses of collection, ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder. Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government, and the abovementioned share of the landholder, or such sum as special custom or the orders of Government might have fixed, was paid to him by the farmer or from the public treasury. *When the extension of cultivation was productive only of a heavier assessment, and even the possession of the property was uncertain, the hereditary landholder had little inducement to improve his estate, and monied men had no encouragement to embark their capital in the purchase or improvement of land, whilst not only the profit but the security for the capital itself was so precarious.* The same causes, therefore, which prevented the improvement of land, depreciated its value. Further measures, however, are essential to the attainment of the important object above stated. All questions between Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their ryots, or other persons concerned in the collection of their rents, have hitherto been cognisable in the Courts of Maal Adawlut or Revenue Courts. The Collectors of the Revenue preside in these Courts as Judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor General in Council in the Department of Revenue. The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the Revenue Officers are vested with these judicial powers. Exclusive of the objections arising to these Courts from the irregular, summary, and often *ex parte* proceedings, and from the Collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the regulations for assessing and collecting the public revenue are infringed, the Revenue Officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another. *Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security, therefore, must be given to landed property and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected. Government must divest itself*

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of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The Revenue Officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the Regulations, must be subjected to the cognizance of Courts of Judicature, superintended by Judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The Collectors of the Revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues, subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the Regulations prescribed for the collection of it. *No power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed or the value of landed property affected. Land must, in consequence, become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture, which are as essential to their own welfare as to the prosperity of the State.*"

By section 51, Regulation VIII of 1793, rules were prescribed to prevent undue exactions from the dependent talukdars.

By section 54 all proprietors of lands were directed to revise, in concert with their ryots, the impositions upon the ryots under the denomination of abwab, muthoot, and other appellations, and to consolidate the whole with the assul into one specific sum ; and by section 55, no new abwabs were to be imposed.

The provisions of sections 56, 57 and 60 of the same Regulation VIII of 1793, are also important. Section 56 says—

"*It is expected that in time the proprietors of land and the ryots will find it for their mutual advantage to enter into agreements in every instance for a specific sum for a certain quantity of land, leaving it to the option of the latter to cultivate whatever species of produce may appear to them likely to yield the largest profit.* Where, however, it is the established custom to vary the pottah, for lands, according to the articles produced therein, and while the actual proprietors of land and ryots in such places shall prefer an adherence to this custom, the engagements entered into between them are to specify the quantity of land, species of produce, rate of rent, and amount thereof, with the term of the lease, and a stipulation that in the event of the species of produce being changed, *a new engagement shall be executed for the remaining term of the first lease, or for a longer period if agreed on,* and in the event of any new species being cultivated, a new engagement, with the like specification and clause, is to be executed accordingly."

Section 57. "*First.*—The rents to be paid by the ryots, by whatever rule or custom they may be regulated, shall be specifically stated in the pottah, which, in every possible case, shall contain the exact sum to be paid by them.

"*Second.*—In cases where the rate only can be specified, such as where the rents are adjusted upon a measurement of the lands after cultivation, or on a survey of the crop, or where they are made payable in kind, the rate and terms of payment and proportion of the crop to be delivered with every condition shall be clearly specified."

Section 60. "*First.*—All leases to under-farmers and ryots, *made previous to the conclusion of the settlement,* and not contrary to any Regulation, are to remain in force until the period of their expiration, unless proved to have been obtained by collusion, or from persons not authoriesd to grant them.

"*Second.—No actual proprietor of land* or farmer, or persons acting under their authority, *shall cancel the pottahs of the khoodkasht ryots, except upon proof that they have been obtained by collusion, or that the rents paid by them within the last three years have been reduced below the rate of the nirikbundy of the pergunnah,* or that they have obtained collusive deductions, or *upon a general measurement of the pergunnah for the purpose of equalising and correcting the assessment.*"

By section 2, Regulation XLIV of 1793, it was enacted as follows :—

"No zemindars, independent talukdars, or other actual proprietors of land, nor any persons on their behalf shall dispose of a dependent taluk to be held at the same or at any jumma, or fix at any amount the jumma of an existing dependent taluk for a term exceeding ten years, *nor let any lands in farm, nor grant pottahs to ryots or other persons for the cultivation of lands for a term exceeding ten years.* Nor shall it be lawful for any zemindar, independent talukdar, or other actual proprietor of land, who may have entered into an engagement with any dependent talukdar fixing the jumma of his taluk for a term not exceeding ten years, *or let any lands in farm, or granted pottahs for the cultivation of lands,* for a term not exceeding ten years, to renew such engagement, lease, or pottah at any period before the expiration of it, excepting in the last year, at any time during which it shall be lawful for the parties to renew such engagement, lease, or pottah, upon the same *or any other terms* for a period not exceeding ten years, calculating from the expiration of the year in which such renewal may take place. All evasions of the prohibitions contained in this section, by entering into two separate engagements, leases, or pottahs at the same time, dating an engagement, lease, or pottah, subsequent to the period at which it may have been actually executed or by any other device, shall be con-

sidered as an infringement of them, and every engagement fixing the jumma of a dependant talukdar, and every lease or pottah which has been or may be concluded or granted in opposition to such prohibitions, is declared null and void."

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I will read the recital of the Regulation, as it is important to show—

1st—that one of the objects of the Legislature was to protect the zemindars and their heirs against improvident leases at low rents, as well as to secure the Government revenue;

2nd—that, previously to the decennial settlement being declared permanent, proprietors of land were not entitled to enter into engagements with their under-farmers or ryots for a period extending beyond the term of their own engagements with the public.

The recital is as follows:—

"The public demand upon the estates of the proprietors of lands with whom a settlement has been or may be concluded under the original Resolutions for the decennial settlement, having been declared fixed for ever, it is to be apprehended that many proprietors either from improvidence, ignorance, or with a view to raise money, or from other causes or motives, may be induced to dispose of dependent taluks *to be held at a reduced jumma*, or fix the jumma of the dependent taluks now existing in their respective estates at an under-rate, *or let lands in farm or grant pottahs for the cultivation of land at a reduced rent for a long term, or in perpetuity, such engagements, if held valid, would leave it in the power of weak, improvident or ill-disposed proprietors, to render their property of little or no value to their heirs*, promote vice and injustice, occasion a permanent diminution of the resources of Government arising from the lands, in the event of the rent or revenue reserved by such proprietors being insufficient for the discharge of the amount of the public demand upon their estates, *be an abuse of the great and lasting benefit which has been conferred upon the landholders by the possession of their lands being secured to them in perpetuity at a fixed assessment*, and, moreover, be repugnant to the ancient and established usages of the country, according to which the dues of Government from the lands (which consist of a certain proportion of the annual produce of every beegah of land demandable, according to the local custom in money or kind, unless Government has transferred its right to such proportion to individuals for a term or in perpetuity, or fixed the public demand upon the whole estate of a proprietor of land, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public so long as he continues to discharge the latter) are unalienable without its express sanction. It is, at the same time, essential that proprietors of land should have a discretionary power to fix the revenue payable by their dependent talukdars, *and to grant leases, or fix the rents of their lands for a term sufficient to induce their dependent talukdars, under-farmers and ryots, to extend and improve the cultivation of their lands*, and that such engagements should be held inviolable in all cases, except where they may interfere with or affect in any shape the primary and indefeasible rights of Government. *Upon the above grounds, and as the proprietors of land, previous to the decennial settlement being declared perpetual, were not entitled to enter into any engagements with their dependent talukdars, under-farmers or ryots, for a period extending beyond the term of their own engagements with the public*, the Governor General in Council has enacted as follows," &c:—

It may be here remarked that Regulation XLIV of 1793 formed part of the general rules of the perpetual settlement of that year, and was passed on the same day as Regulations I, II, and VIII of the same Code, *viz.*, on the 1st May 1793.

The law continued in this state until Regulation V of 1812, when Section 2, Regulation XLIV of 1793 was repealed, and it was declared that proprietors of land paying revenue to Government were competent to grant leases for any period which they might deem most conducive to themselves and their tenants, and to the improvement of their estates (Section 2).

Section 3 enacted that "such parts of Regulation VIII, 1793, and of Regulation IV, 1794, as require that the proprietors of land shall prepare forms of pottahs, and that such forms shall be revised by the Collectors, and which declare that engagements for rent contracted in any other mode than that prescribed by the Regulations in question shall be deemed to be invalid, are likewise hereby rescinded, *and the proprietors of land shall henceforward be considered competent to grant leases to their dependent talukdars, under-farmers and ryots, and to receive correspondent engagements for the payment of rent from each of those classes, or any other classes of tenants, according to such form as the contracting parties may deem most convenient and most conducive to their respective interests: provided, however, that nothing herein contained shall be construed to sanction or legalise the imposition of arbitrary or indefinite cesses, whether under the denomination of abwab, muthoot, or any other denomination.* All stipulations or reservations of that nature shall be

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adjudged by the Courts of Judicature to be null and void; *but the Courts shall notwithstanding maintain and give effect to the definite clauses of the engagements contracted between the parties, or, in other words, enforce payment of such sums as may have been specifically agreed upon between them.*"

Sections 4 and 5 of that Regulation apply to purchasers at the public sales and persons attaching lands on behalf of Government, and not to ordinary cases between zemindars and persons claiming through them and their ryots.

The preamble of the Regulation, the latter part of section 5, and the wording of sections 6, 7, 8, 9 and 10, all show that those sections must be read together, and that they were not intended to extend to any cases except those in which there should be a public sale or attachment of the lands.

Section 2, Regulation V of 1812, was explained by Regulation XVIII of 1812.

By Regulation VIII of 1819, Section 2, it was declared that *any leases or agreements for the fixing of rents* then in existence, that had been granted, or concluded for a term of years, or in perpetuity, by a proprietor under engagement with Government, *should be deemed good and valid tenures according to the terms of the covenants or engagements interchanged*, notwithstanding that the same might have been granted before the passing of Regulation V of 1812, and while the rule of Section 2, Regulation XIV of 1793, which limited the period for which it was lawful to grant such engagements to 10 years, was in full force and effect; provided that nothing therein contained should be held to exempt tenures held under engagements from proprietors of estates paying revenue to Government from the liability to be cancelled *on sale of the said* estates for arrears of the said Revenue under the rule of section 5, Regulation XLIV of 1793, unless specially exempted from such liability by the rule in question, or by any other specific rule of the Regulations in force.

It is clear from the above extracts which I have read from the Regulations—

1st—that the zemindars were in 1793 declared to be the proprietors of the lands, and encouraged to exert themselves in the cultivation and improvement of their estates, under the certainty that they would enjoy exclusively the fruits of their own good management and industry;

2nd—that from 1793 to 1812 they were prevented from granting pottahs or leases to ryots for terms exceeding 10 years, and consequently could not, during that period, have created ryots with hereditary rights of property in the soil;

3rd—that after Regulation V of 1812 they were entitled to grant leases to all new ryots and to all ryots who were not entitled to demand a renewal of their leases, such as khoodkhast ryots, at any rent, and for any term that might specifically be agreed upon between them, and that such leases, whether in perpetuity or for any term, were binding upon the zemindars and their heirs or assigns, though not binding upon a purchaser under a sale for arrears of revenue, and that the Courts were to give effect to the definite clauses of the engagements, *and to enforce payment of the sums specifically agreed upon;*

4th—that, by the retrospective effect of Section 2, Regulation VIII of 1819, leases in perpetuity or for terms granted prior to 1812 were rendered valid and binding. Consequently that zemindars had power, after Regulation V of 1812, to grant leases or pottahs to new ryots at whatever rent they might mutually agree upon, provided they did not impose indefinite or arbitrary cesses; and that, by the retrospective effect of Regulation V of 1812, all such leases granted between the date of the permanent settlement and the time of the passing of Regulation V of 1812, were rendered valid. If the defendant's original holding commenced after the date of the permanent settlement (and if it commenced before, it was for him to prove it either by positive or presumptive evidence), he was entitled to have effect given to any definite engagement between him and the landowner, either as to the duration of the term, if any, was specifically granted to him, or as to the amount of rent to be paid, or the rates at which it was to be assessed. But he failed to prove that any such engagement was entered into, or that the term for which he was to hold was ever fixed

or defined, or that any stipulation was made as to the rate of rent at which he was to hold. He must be considered, therefore, to have entered and held as a tenant for one year only, and to have continued to hold on with the consent of the landowner from year to year, or according to the language more generally used in this country, as a tenant-at-will; and, but for Act X of 1859, he would have been liable to have his tenancy determined by the landowner, and to be turned out of possession, at the end of any agricultural year. It is unnecessary to determine whether, according to the law of this country, any notice to quit would have been necessary or not.

It was admitted that the defendant was entitled to a right of occupancy so long as he paid the rent payable for the land, and no evidence was given to show that he was entitled to any ancient right, or that he had occupied more than 30 years. The rent, therefore, not being fixed, was, by virtue of section 5 of Act X of 1859, to be at a fair and equitable rate. By section 17 of the same Act X of 1859, his rent could not be enhanced, except upon one of the grounds mentioned therein; and as it was not shown by the plaintiff, the landowner, that the defendant held or cultivated under a written engagement, he would not have been liable to have his rent enhanced for the year 1268 unless a notice had been served upon him on or before the month of Cheyt 1267, specifying the rent to which he would be subject for the ensuing year, and the ground upon which the enhancement was claimed.

As before observed, it was admitted that a ground for enhancement under Section 17 existed, namely, that the value of the produce had increased otherwise than by the agency or at the expense of the ryot, and it was further admitted that the notice required by Section 13 had been served before the expiration of the month of Cheyt in the year preceding that for which the enhancement was claimed. Upon being served with that notice, the defendant had a right to quit if he was not willing to hold at the enhanced rent demanded by the notice (see Act X of 1859, section 19); and if he had done so, he would have been in no worse position than he would have been if he had not had a right of occupancy, and the plaintiff had determined his tenancy at the end of 1267 because they could not come to terms as to the rent to be paid. It was argued that the holding for 12 years would have given a right of occupancy even if Act X of 1859 had not been passed; and a case reported at page 778 of the Sudder Decisions for 1853 was cited as an authority in support of that position. I have examined that case, and, after full consideration, I cannot admit it as a binding authority. No reasons were given by the Judges who decided it, and in argument the right was based upon the Statute of Limitations. It is impossible to conceive how the Statute of Limitations could have created such a right. This is not my opinion only. In the case of Degumber Mitter and Ramsoonder Mitter (Sudder Decisions, 1856, page 617), it was held, in accordance with numerous decisions of the Sudder Court, that the Law of Limitation did not prevent enhancement; that the claim to assess was a continually recurring cause of action, and that the possession of a tenant paying rent was not adverse to the land-owner, but only permissive. A similar decision was come to in the case of Mussamut Lalahonissa Khatoon *versus* Ramgopul Sein (same Volume, page 665).

In the case of Maharaja Newalkissore Singh *versus* Auchumbit Roy (Sudder Decisions for 1846, page 358), the plaintiff sued to recover possession of lands held by the defendants in excess of the quantity to which they were entitled under their pottah. But the defendants had held the land sought to be recovered for 18 years after the plaintiff's purchase at an auction sale, and the Court held that the plaintiff was barred by the Statute of Limitations.

The case of Mirtunjoy Pauree and others *versus* Omeschunder Paul Chowdhry (Sudder Decisions for 1849, page 411) was a similar one. The defendants had held undisturbed possession of the lands sought to be recovered in excess of the quantity of land which they held under a pottah at a fixed rent, and it was held that the Statute of Limitations applied.

It must be remarked, however, that in these cases, if the land sought to be recovered was included in the defendant's lease, the lease would prevent the plaintiff from turning the defendant out of possession so long as it continued to exist. If the land was not included in the lease, and the defendant had not paid rent for it, the defendant held it, not under the lease, but adversely, and

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the plaintiff was barred by the Statute of Limitations in consequence of the adverse holding for more than 12 years.

Those cases are therefore no authority for the position that a tenant who holds land as a tenant under a lease, or as a tenant for an uncertain term, and pays rent for it for upwards of 12 years, gains a right by the Statute of limitations to continue to hold the land after the expiration of the lease or the determination of the tenancy. In such a case he holds during the tenancy under a contract expressed or implied, and does not gain a title by an adverse holding. In the latter of the two cases above referred to, one of the Judges held that the Statute of Limitations was not a bar because the defendant had been guilty of fraud, but the two who were in the majority held that no fraud had been set up or specifically specified.

In the case of Ramchunder Paul Chowdry *versus* Panchoo Mundul (Sudder Decisions 1856, page 953), the law of limitation was held not to apply, inasmuch as the defendant had not been in possession 12 years; but it was held that the defendant was proved by his pottah to be a Kudeemee ryot having a fixed right of occupancy. That case turned not upon the Statute of Limitations, but upon the construction of the particular lease which contained an express stipulation of renewal, for the ryot was expressly assured "that on the expiration of the lease the settlement for the same land would be renewed at the same rent" (page 958).

Some remarks were made by two of the Judges as to the defendant's right of hereditary occupancy, "that is," (the Judges say), "as we apprehend the right to occupy the land as khoodkhast ryots, or resident and hereditary cultivators having a presumptive right of occupancy, subject to the payment of such rents as may be legally imposed." What they said subsequently as to a khoodkhast ryot was merely an *obiter dictum*, and not binding as an authority.

It would surprise land-owners in England if they were told that tenants who held under leases for 99 years at a low rent, or had held for 20 years as tenants from year to year, had acquired rights of occupancy by the Statute of Limitations, and that at the expiration of the leases, or upon the determination of the tenancies, they were not bound to quit, but were entitled to rights of occupancy to hold on at a lower rent than the land-owers could obtain from new tenants.

Mr. Montriou in his argument contended that a ryot who acquires a right of occupancy by holding for 12 years under Section 6, Act X of 1859, is entitled to the same rights as a ryot who has occupied for 300 years. If so, a ryot who has held for 30 years (and the statement put forward on behalf of his client was that he had held for 30 years) cannot, by acquiring a right of occupancy by such holding, be entitled to any greater privilege, as regards the rent which is to be considered fair and equitable, than a ryot who has gained a right of occupancy by a holding for only 12 years. Indeed, there is no assignable reason why a tenant, who gains a right of occupancy by holding for more than 12 years, ought to have a better or more valuable right than one who has gained a right of occupancy by having occupied only 12 years, unless the period of holding is sufficient to show that he was an ancient hereditary ryot whose title had its commencement before the permanent settlement. Length of holding, coupled with other evidence, such as descent from ancestor to heir, may be presumptive evidence of an ancient hereditary tenancy which commenced before the permanent settlement, but unless the evidence is sufficient to prove an ancient right, there is no more virtue in a holding for 30 years than there is in a holding for 13.

But for Act X of 1859 the defendant (assuming that he was not holding for a fixed term, and that his tenancy commenced since the date of the permanent settlement), would, in my opinion, have been liable to have his tenancy determined and to be turned out of possession at the end of 1267, if he and his landlord could not agree as to the rent to be paid for the future. But it being admitted that he had a right of occupancy, he was entitled to hold at a fair and equitable rate.

Mr. Montriou contends that what is fair and equitable depends upon the status of the ryot, and not upon the value of the produce and cost of produc-

tion; that a ryot having a right of occupancy has a proprietary right in the soil, and that what might be fair and equitable as regards a ryot having capital, would not be fair and equitable as regards a ryot who is forced to borrow the necessary capital from a mahajun.

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I cannot put such a construction upon the words "fair and equitable." If such were the intention, I should have expected to find a fourth ground of enhancement in section 17, namely, if a ryot who was forced to borrow the capital necessary for cultivating the land at the time when the tenancy was created, and the rent fixed, shall be proved to have acquired sufficient capital of his own to enable him to cultivate the land without borrowing from a mahajun.

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These and all such enquiries as to the circumstances of the ryot would involve endless disputes and litigation, to say nothing of perjury, and the taking of the evidence in a suit to enhance the rent for a few beegahs of land, instead of occupying two months as in the present case, might possibly be extended to four.

I cannot imagine that any such injustice to the land-owners could have been intended. At the time of the permanent settlement, the Governor General in Council, by section 8 of Regulation II of 1793, reserved the right, whenever he might deem it proper to enact such Regulations as he might think necessary for the protection and welfare of the ryots and other cultivators of the soil, or, to use the words of the Despatch of the Court of Directors, "such Regulations as might be necessary to prevent the ryots from being improperly disturbed in their possession, or loaded with unwarrantable exactions" (Harington's Analysis of the Regulations, Volume 2, page 189). Whether section 6, Act X of 1859 (which is worded much in the same manner as section 49, Regulation VIII of 1793), was intended to apply to holdings which existed at the time of the passing of the Act, and to such holdings only, or whether it was intended to apply to future as well as to past holdings, or to future holdings only, it is clear that it created a new right which was never before acquired by such a holding.

To hold that the Legislature intended to confer rights of occupancy which did not previously exist at rents lower than such as could be reasonably obtained from new ryots would be giving a construction to the Act which would render it an unjust interference with the vested rights of the land-owners in the permanently-settled districts, would considerably reduce the value of their property, and would defeat the promise which at the time of the permanent settlement was held out to them, that they would enjoy exclusively the fruits of their own good management and industry.

It can scarcely be imagined that the Legislature could have intended to confer by a 12 years' holding a right of occupancy against a zemindar at a lower rent than he could obtain from a new tenant, when they would not confer such a right against a purchaser claiming through the Government by reason of a purchase at a sale for arrears of revenue, and yet we find that a purchaser at a sale for arrears may annul a tenure created by a holding for 12 years, and may eject all under-tenants except such as existed at the time of the permanent settlement—(See Act XI of 1859, Section 37.)

I cannot think that it was the intention of the Legislature, by section 6 of Act X of 1859, to give to a ryot, who obtained possession only 12 years ago when he had no right to the land, and when the zemindar was not even bound to accept him as a ryot, or to admit him into possession, any proprietary rights which would entitle him to participate beyond the period of his tenancy in any increase in the value of the produce of the land not caused by his own agency or at his expense.

Surely it could not have been necessary, in order to protect the ryots from unwarrantable exaction, to enact that a ryot who had no right in the land 13 years ago, should, by reason of his having occupied it for 12 years, become entitled to hold it at a less rent than a new ryot would give for it.

The Minute of Lord Cornwallis, which was referred to by Mr. Montriou in his argument, contains the following remarks:—

"Neither is the *privilege which the ryots in many parts of Bengal enjoy*, of holding possession of the spots of land which they cultivate *so long as they pay the revenue assessed upon them*, by any means incompatible with the proprietary rights of the zemindars. *Who-*

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ever cultivates the land, the zemindar can receive no more than the established rate, which, in most places, is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression, from which he could derive no benefit"—(*Harington*, Volume 2, page 184).

In another part he says:—

"Neither is prohibiting the landholder to impose new abwabs, or taxes, on the lands in cultivation tantamount to saying to him *that he shall not raise the rents of his estate.*" (*Ibid.*)

It should be borne in mind that, when Lord Cornwallis spoke of established rates, he was speaking before the permanent settlement, when it was in the power of the Government to raise the rates whenever a new settlement was made with the zemindars.

As bearing upon this point I will read a short extract from the despatch of the Honourable Court of Directors, by which they expressed their concurrence in the sentiments of Lord Cornwallis. It will be found in *Harington's Analysis*, Volume 2, pages 188-89. They there say:—

"The greatest obstacle to the execution of the intended system of permanency and certainty appeared to be the difficulty of providing for an equitable adjustment and collection of the rents payable by the ryots to the landholders. It might indeed be hoped that, under the proposed system, the latter would gradually learn from experience, that their own interests are connected with the security and encouragement of the cultivators of the soil, *and that the time would come when the advantage of every class of the community would be best promoted by leaving to every one the care and management of his own property without restriction.* 'But (the Court adds) as so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their own permanent possession for the purpose of exaction and oppression.' We therefore wish to have it distinctly understood that while we confirm to the landholders the possession of the districts which they now hold and subject only to the revenue now settled, and while we disclaim any interference with respect to the situation of the ryots, or sums paid by them, with any view to an addition of revenue to ourselves, we expressly reserve the right which clearly belongs to us, as Sovereigns, of interposing our authority in making, *from time to time, all such Regulations as may be necessary to prevent the ryots being improperly disturbed in their possession, or loaded with unwarrantable exactions.* A power exercised for the purposes we have mentioned, and which has no view to our interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders, and instead of diminishing, will ultimately enhance the value of their proprietary rights. Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, *under which it appeared to be a general maxim, that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied.* This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar; for otherwise such a rule would be nugatory; *and in point of fact the original amount seems to have been annually ascertained and fixed by the act of the Sovereign.*"

This last remark is confirmed by the Regulation XVI of 1769 cited by Mr. Montriou from 3 Colebrooke's Digest, page 174, for in Section 3, page 176, the supervisors were directed to fix the amounts of what the zemindar receives from the ryot as his income or emoluments.

In my opinion the intention of the Legislature (to use the words of Lord Cornwallis) was to prevent the zemindar from dispossessing one cultivator for the sole purpose of giving the land to another, and thereby committing a wanton act of oppression from which he could derive no benefit. It is not for me in this place to speak as to the policy of an enactment even to that extent. I am clearly of opinion that, after the permanent settlement, and before Act X of 1859, a right of occupancy was not acquired by a ryot merely by holding or cultivating land for a period of 12 years. If, when the right was created by the Act, it had been left to the arbitrary discretion of the zemindar to fix his own rent, he might have fixed it at any amount he pleased, and might thus have frustrated the intention of the Legislature to give a right of occupancy. But it was declared by section 5 that ryots having rights of occupancy should be entitled to hold at "fair and equitable rates," thus leaving it to the Courts to determine in every case of dispute what is a fair and equitable rate. This, in my opinion, gave the ryots no greater right than would be created by a covenant in a lease to renew it at a fair and equitable rent. To be fair and equitable, it must be fair and equitable so far as both parties are concerned, not fair and equitable as regards the ryot, and unfair and inequitable as regards the proprietor of the land, and it would not be fair and equitable to a land-owner to fix the

rent at a lower rate than he could obtain from a new tenant if he had not been deprived, by the Act of the Legislature, of his power of determining the tenancy and re-letting the land to a new tenant. I find that a ryot who gains a right of occupancy by Section 6, is not precluded from determining the tenancy of another ryot to whom he may have sublet, and who by an occupation of 12 years gains no right of occupancy against him, and may be compelled by his superior ryot either to pay him the full rent of the land or to quit it—(*Vide* latter part of Section 6.)

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I wish to remark, in order to prevent any misunderstanding, that this judgment is given upon the assumption that the defendant is not an ancient ryot having hereditary rights.

The rights of ryots who have held from the time of the permanent settlement at fixed rates are protected by Section 3, Act X of 1859; and the means of proving such holdings have been rendered more easy and within the power of those who are entitled to them by Section 4.

If there are any other ancient or hereditary rights to which a ryot is entitled, he is not precluded by Act X of 1859 from claiming and proving such rights in due course of law. But such rights cannot be assumed or admitted without proof either positive or presumptive. A ryot whose title had its origin at a date subsequent to the permanent settlement had not, in my opinion, a prescriptive or any right of occupancy beyond the term expressly or impliedly agreed upon between the landowner and him, merely because he had held for 12 years. Section 6 gives him the right whether the land be held under pottah or not. Is it to be supposed that the Legislature intended to give a right of occupancy to a ryot who held under a lease for 12 years which may have expired the day after Act X passed, and to entitle him to hold at a less rent than a ryot who had held under a lease for 11 years which expired on the same day, neither of "such ryots having ever" been in possession before the commencement of their respective leases?

A ryot may have rights by contract or by prescription, or he may have rights by virtue of express enactment, and those rights may be enforced by law. The evidence which may be necessary to prove the existence of such rights must depend upon the facts of each particular cases.

We have been in the habit of talking of "Pergunnah rates," and of rates paid for similar land in the neighbourhood, without much consideration. Are such rates always to remain stationary, or how are they to be increased, if, for instance, in consequence of a railway or canal, means should be provided for exporting the produce, and the value of the crops should be thereby doubled? Who is to be entitled to the benefit of the increased value as the pottahs granted in modern terms fall in? The land-owner, or the ryot?

There is a great difference between the permanently-settled districts and those in which the assessments upon the zemindars are from time to time renewed and altered, and where the rates payable by the ryots can, if necessary, be from time to time revised, and in which the zemindars, as declared by the preamble of Regulation XIV of 1793, cannot enter into engagements with their ryots for a period extending beyond the term of their own engagement with the Government.

I will add one word as to the argument of Mr. Montriou, that the ryots were originally the owners of the soil, and that neither the Government nor the zemindars were the proprietors. This argument cannot apply to ryots who are in possession of land which has been occupied and brought into cultivation for the first time since the permanent settlement. It is clear that a ryot cannot at the present day, by merely entering upon land belonging to a zemindary, and bringing it into cultivation, become the proprietor of the soil. The zemindar may lose his right by the operation of the Statute of Limitations, and the right to the soil may thus be acquired by the ryot. But in cases in which there is no contract, and to which the Statute of Limitations does not apply, the ryot cannot, by occupying and cultivating, become the proprietor of the soil. Neither can he, by occupying with the consent of the zemindar and paying rent for the land to him, become entitled to the proprietorship of the soil, even though he should acquire a right of occupancy by virtue of Act X of 1859.

It is clear that many of the documents to which Mr. Montriou referred show that the zemindars were then considered the proprietors of the soil, and

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were taxed for the same in one sum for large tracts of land which were in the occupation of many ryots, and that they were not considered merely the Collectors of the Government dues separately assessed upon and due from the ryots.

In the Regulation of 16th August 1769, at page 174 of the 3rd Volume of Colebrooke's Digest, the supervisors were directed to fix the amount of what the zemindar receives from the ryots as his income or emolument. In the Regulation of 1791, sections 63, 64, and 65, the word "rent" is actually used with reference to the payment made to the zemindar. It is clear also, from the Regulations of 1793, that from that date the sums paid by the ryots to the zemindars were considered as rent. It appears also from the Firman of the Emperor Alumgeer, cited by Mr. Montriou, that the assessments were made upon the ryots by those who paid the revenue to Government, and that *pottahs* were granted by them to the ryots. It is not very material whether the sum assessed upon the ryots was at that time considered as rent or revenue. It is clear that the ryots at that time had to pay a much larger proportion of the gross produce or of the value of it than has been allowed in the present case, which is shown, by the judgment now sought to be reversed, to be less than one-sixteenth.

It was urged by Mr. Montriou that the Court upon Special Appeal had decided a matter of fact. But this, in my opinion, was not the case. The Judges in the Mofussil are bound to give the reasons for their Judgments, and in this case the Judge found the facts specially which was the proper course for him to adopt. His finding was in the nature of a special verdict. Suppose he had taken into consideration in fixing the rent for 1268 B.S. that the defendant had incurred expenses in the marriage of his daughter, and in purchasing clothes, and had deducted those items from the value of gross produce of the land, we should certainly have had the power on special appeal to disallow those items.

Upon the whole, I see no reason to doubt the correctness of the Judgment in the appeal which was not given without much consideration, and I reject the application for a review. I will remark that in this case I do not wish to be understood as expressing an opinion as to whether section 6, Act X of 1859, was intended to be retrospective or not. The case to which I referred in the latter part of the Judgment delivered in October 1862, and in which I thought that the question would be settled, has since been remanded to determine certain questions of fact, with a direction that, when the facts shall have been decided, the case shall be heard before a full bench. In this case the right of occupancy was admitted, and it was not shown that the defendant was an ancient hereditary ryot, or that he had been a possessor for more than 30 years, at most a period long subsequent to the date of the permanent settlement.

Mr. Justice Sumbhoonath Pundit.—The decision of the High Court of October 1862, remanding the case having laid down certain rules by which "the fair and equitable rent" was to be found out for *mathan* lands of certain kinds of ryots, and after remand the Lower Appellate Court having found on evidence the area which one ryot can cultivate by a couple of ploughs, the proportion of the area which yearly lies fallow, which quantity the Lower Court added to the preceding area, and having also found the average quantity of produce of these lands, the average value of the same, the cost of production, including hired labour, as well as the ryot's wages as a labourer, the amount of the profits of agricultural capital, the amount of the capital which the ryot is likely to employ in cultivation, and some other facts which the Lower Court was directed by the High Court to determine, and several others decided the case according to these facts. The case was then appealed by the plaintiff, and taken up for trial, when I had the honour to sit with the Chief Justice. During the trial of the case, on behalf of the respondent nothing was said against the order of remand, except that the ryot is entitled to a share of the profits of the increased value, and that too not directly against the order of the remand, but rather on the supposed strength of the order itself. Excepting two objections to be noticed shortly after, no complaint at that time was made in behalf of the ryot, to the effect that any other deduction which, under the order of remand, should have been made in his favour, has not been allowed, or that in spite of the directions in the order of remand, some other deductions than those allowed by the High Court should be granted.

The two items* claimed were such as could not at all be allowed, and are not now specially the subject-matter of review. No objection in earnest was taken against the average of the produce and the value of the produce as found and fixed by the Zillah Judge, and it was not pleaded before us that more lands lie fallow than the Lower Court has taken into account.

* See page 6 of the printed pamphlet.

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The order of remand directed that, in order to find out "the fair and equitable rent," the whole of the produce is to be valued according to present rates, and after deducting from the amount so found, costs and allowances therein mentioned, the balance would represent the total of the rent to be fixed. It had also been decided that the ryot in this case had no other right than that of occupancy, that his case was provided for in sections 5 and 17 of Act X of 1859. Neither by the cross appeal nor by a formal application was any review of the principles upon which the remand order was based asked by the respondent.

No complaint was made by the ryot that the facts have been found imperfectly, illegally, or against evidence. On the contrary, the value of the gross produce as found by the Lower Appellate Court was expressedly on both sides adopted as a true finding.

In such a state of things, I could not think myself competent to take up, as points of law, the principles of the order of remand, at least to the extent that they were objected to by the tenant, even if I had entertained doubts regarding the correctness of their application to the present case. As to the objections on facts, some that were urged were not allowed, and if others have been urged, they could not be entertained in a special appeal.

Plaintiff, appellant, having objected to certain allowances made by the Zillah Judge, on the ground that these were made against the principles of the order of remand, his objections were tried, and I thought proper to coincide with the Chief Justice in allowing to the ryot all the objected items except two, *viz.*, the value of a house for the ryot to live in as a separate item, and the amount of an insurance for the risks of cultivation. I also agreed with the Chief Justice when virtually the price of the house was after all allowed, but only as a part of the wages of labour in addition to the money allowed by the Zillah Judge on that account. I also concurred with the Chief Justice in disallowing the insurance charge above mentioned, because I thought that when we had already allowed a very high rate of interest upon agricultural capital, this allowance on principle included insurance for all risks attending the undertaking, and thought that even if this risk be considered as not included in this high rate of interest, the average of produce was undoubtedly required to be fixed after making proper allowances for entire as well as partial failures.

To these opinions I still adhere. The argument of the learned Counsel for the petitioner, who technically asks for a review of the decision to which I was a party, were addressed virtually against the order of remand. I do not mean to say that the learned Counsel for the petitioner has not yet a right to attack the principles of that decision. I think, however, the Chief Justice alone can refuse or allow the present application for review. I do not feel myself legally authorised in review to pronounce any opinion upon the judgment of a full bench of three Judges, all of whom are present in Court. I was asked to hear this review only because it was a review of the decision which was passed when I sat with the Chief Justice. By the last judgment only previous orders were carried out.

With reference to the question of onus, I see clearly that under the wording of section 5, Act X of 1859, plaintiff had to prove his case, but I do not see that allowing this to be the right construction of the law, the learned Counsel for the petitioner has succeeded anywise in impugning the correctness or the validity of the last judgment, which was pronounced by mutual consent on facts found by the Judge on the whole of the evidence in the case.

Though in the last decision it was said, and properly too, that the Court was not bound to take a direct cognizance of the fact that the ryot *borrows his capital and even his food*, yet practically a high rate of profit was allowed on the capital employed on cultivation, and not anywise less than the ryot had, according to the finding of the Court below, occasion to pay to his creditor.

As to the objection of the respondents that, in *drawing* the average of produce, the produce of certain fields was improperly disallowed by the Zillah

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Judge, it is necessary to mention that by mutual consent the evidence taken in one case had been made applicable to all, and the Lower Court was considered by the last decision of this Court to have acted right in proceeding upon evidence, and not upon personal observation.

Allowing that even political economists in Europe do not strictly follow the rules adopted in the order of remand, when, in the determination of the amount or rate of rent, custom and rights not held by ordinary tenants intervene, it cannot be said a decree of enhancement at the rate per beegah of one rupee in the place of five annas of the former rent was anywise excessive, or that a decree for one rupee as rent out of more than six rupees of the value of gross produce of a beegah was unfair and inequitable to the ryot. Ryots mentioned in section 5, Act X, are not protected from enhancement by uniform payment of rent for 12 years, as the landholder may by a suit prove that the rents hitherto paid are below the prevailing rate payable by the same class of ryots for lands of a similar description, and with similar advantages, or that the value of the produce, or that the productive powers of the lands, have been increased otherwise than by the agency or at the expense of the ryots.

It may be allowed, as argued by the learned Counsel for the petitioner, that cultivators of neej and khamar lands not held by ryots, as well as those cultivators who are under-tenants of other ryots, are persons distinct from ryots who cultivate *jotedaree* lands. The latter may be allowed to hold ordinarily lands which had not been, either from before or at least at the time when they got their leases, khamar lands or lands held as under-tenants to other ryots. All ryots, as distinguished from these cultivators of khamar lands or of koorfa under-tenants of ryots, may also be allowed to be of a distinct class, though, as members of this class, some may, as a sub-division, have higher, and some lower and different rights. It is, however, clear that ryots mentioned in section 5 of Act X of 1859 are not kudeemee ryots or ryots holding originally under any hereditary or transferable tenures, or holding through those who held at one time as such, and must have acquired the right of occupancy by being allowed to hold as a ryot for 12 years, a right which they did not possess in the 10th and 11th years of their possession. We may also allow to the petitioner, as argued by him, that zemindary lands are ordinarily, for purposes of leasing, &c., divided into two sorts, ryottee and khamar; that what was ryottee might in course of time become khamar, and that what was once khamar may by an act of the landholder become ryottee lands. We may further allow that all ryots in this country have been, according to custom, allowed a share out of the profits of the lands cultivated by them beyond the bare wages of a hired labourer, and that zemindars, notwithstanding the decennial settlement, have not by law or custom that complete right over the lands and tenants which parties called proprietors enjoy in other countries. Making all these allowances, it has not been shown that the assessment fixed by the last decision of this Court is unfavourable to the tenant. When out of the three rupees of the former value of the gross produce of a beegah, five annas were received by the zemindar as his rent, the remainder included, along with the sum necessary for expenses, all the profits which the ryots may have been entitled to claim as his share. Finding that it was not in any way probable, and was not pleaded or proved by the ryot, that the increase in the cost of production was higher than the proportionate increase of its value, so as to include the whole of the increased value, or also any portion of the former profits, I awarded eleven annas to the landlord out of three rupees of the increase of value of produce. When I did so, I had no ground to suspect that I was giving to the landlord any excessive rate of enhancement likely to cause misery to the ryot, or any revolution in the country, or that out of the remainder, after all necessary increased expenses, some share of this increased value of production was not likely to be left to the tenant. I could never believe that the costs of production could ever have been so increased as to keep pace with the increase of value. I thought that if giving eleven annas, or even a little more out of three rupees representing the increase in value, would not leave any *additional* profit to the ryot, he cannot complain, as his former profits, whatever they were, were not at all affected, and that when by law the increase in value is made a ground of enhancement, even if a decree were given to the landlord for the whole of the increased value minus the increased expenses, the ryot could not complain

against the Court, as it was bound to administer the law. Nothing having been, therefore, shown to impugn the correctness of the last decision, as far as I am concerned, I reject the review.

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Minute by the Honourable the Chief Justice of the High Court of Judicature at Fort William in Bengal, Appellate Jurisdiction.

Minute by the Honourable Sir Barnes Peacock, Chief Justice of the High Court, dated the 31st March 1864.

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In compliance with the request of the Hon'ble the President in Council conveyed by the letter from the Secretary to the Government of India, No. 6453, dated the 12th October 1863, that the Court would favour the Government of India with their opinion as to the points in which Act X of 1859 appears to require amendment, and with a full explanation of the difficulties which, in the judgment delivered in the case of James Hills *versus* Isher Ghose, are described as arising from certain of its provisions, I have the honour to record the following remarks for the information of the Government.

My principal objection is to section 6, but I would also repeal section 17.

In my opinion, as shown by my judgment* dated the 17th March 1864, upon an application for a review of judgment in the abovementioned case of James Hills *versus* Isher Ghose, a ryot did not, prior to the passing of Act X of 1859, acquire a right of occupancy, merely by cultivating or holding for 12 years. Although I voted and protested against the third reading of the Act, I did so, not upon the ground of the introduction of sections 6 and 17; and for my own part I must admit that the passing of those sections was a great mistake. I would willingly correct it, if I had the power, by repealing the sections.

From the papers connected with the Act, it will be found that, as regards section 6, much reliance was placed upon the order of the Government of the North-Western Provinces of the 17th September 1856, which was erroneously supposed to have declared that it was consistent with the general practice and recognised rights of the ryots that a holding of the same land for 12 years should be considered to give a right of occupancy. (See the papers connected with the Bill, and especially the Report† of the Select Committee on section 6 of the Bill as amended by them, and the Papers (No. 5) from the Secretary to the Government of the North-Western Provinces. See also particularly the Note on the Bill by the Secretary to the Government of the North-Western Provinces, dated the 26th March 1858, paragraph 18.‡)

There had also been a decision of the Sudder Court for Bengal to the effect that a holding for 12 years gave a right of occupancy. That case, however, in my opinion, is not law. I have alluded to it in the judgment to which I have above referred, and shown that it was at variance with other decisions of that Court.

I was most anxious not to interfere with any well-known usage or recognised rights of the ryots, and I yielded too readily to the opinions of others whose experience in such matters I believed to be greater than my own. I have since devoted much time and labour to the consideration of the question, far more than I was able to do when the Act was under consideration.

Mr. Muir, in a very able and valuable paper, dated the 29th May 1863, upon section 6, Act X of 1859, has shown how the order of the Government of the North-Western Provinces originated, and that a holding for 12 years does not give a right of occupancy.

* Copy sent herewith, No. 742 of 1863.

† "SECTION VI.—The laws in force speak of '*khoodkasht* ryots' as possessing rights of occupancy, and in some places the words '*khoodkasht*' seem to be considered as synonymous with '*resident*.'[1] 'Resident' was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy, and it appears that after much enquiry it was prescribed by an order of the Government of the North-Western Provinces in 1856, *as most consistent with the general practice and recognised rights, that a holding of the same land for 12 years should be considered to give a right of occupancy*. We have followed this precedent, and altered the section accordingly."

[1] Regulation LI, 1795, section 10. Regulation VIII, 1819, Section II, Clause 3, and Section 18, Clause 5.

‡ "Section IV (of the original Bill) goes upon the fallacy of regarding every *resident* ryot and cultivator to have a right of occupancy. The subject has been fully discussed in the correspondence which preceded the issue of the Board's Circular, dated 26th September 1856. This correspondence, including the opinion of all Commissioners and of all Collectors of experience, was ordered to be printed I have not the collection (probably burnt at Secundra) by me at present, but it distinctly proved that *residence* was not a necessary or expedient condition of right of occupancy. The rule was, upon this correspondence, laid down, which the General Order of the 17th September and the Board's Circular of 26th September follow, *namely, that twelve years' occupancy gives a fixed title* The conditions and precautions attached to this rule were carefully considered and prescribed in the Board's Circular, and I would recommend that they be taken into consideration by the Legislative Council."

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I never understood that, by the words "fair and equitable" in section 5, a tenant having a right of occupancy was to be allowed to hold at a lower rent than a tenant not having a right of occupancy. I considered that he was merely not to be turned out of possession, but that he was to pay a reasonable rent, unless he could show that he held at a fixed rate, or at a rate to be settled according to fixed principles. (See the debate on section 17 of the Act in the Proceedings of the Legislative Council for 1859, pages 220 to 226 upon an amendment proposed by Mr. Ricketts).

That gentleman, whom every one must admit to have had great experience in all matters relating to the revenue and to the relations existing between the zemindars and ryots in the Lower Provinces, proposed to give the land-owner two-fifths of the market value of the gross produce as his rent, if the evidence should fail to show what rate of rent was equitably assessable. On the other hand, Mr. Currie, a gentleman of equal experience, thought that even one-fourth would be too high. In the case just decided, the landowner recovered less than one-sixth of the value of the average gross produce. This shows how great the difficulty is which has been imposed upon the Courts of Justice by the conjoint operation of sections 5 and 6. It must be evident that, wherever a right of occupancy exists, it cannot be left to the landowner to decide what amount of rent the ryot shall pay. There must be some restriction; otherwise, by imposing an exorbitant rent, the zemindar might always get rid of the right of occupancy. Section 5 restricts the right of the zemindars, and declares that ryots having a right of occupancy, but not holding at fixed rates, are entitled to receive pottahs at fair and equitable rates. Whenever, therefore, a dispute arises as to what is fair and equitable, the question must necessarily be determined by Court of Justice. In England, where a tenant holds over after the expiration of his tenancy, he is liable to pay a reasonable amount for the use and occupation of the land. In technical language the landlord is said to be entitled to recover *quantum meruit*, which was never considered as entitling the old tenant to hold at a less rent than the landlord could have obtained from a new tenant. If section 6 had not been enacted, comparatively very few cases could arise in which section 5 would be called into operation, for it would be only in those cases in which rights of occupancy could be proved to exist, according to the law as it stood before Act X was passed, and in which the rates were not fixed or capable of being ascertained by reference to fixed principles. Section 6 has rendered it necessary for the Courts to determine what is a fair and equitable rent in every case in which a zemindar wishes to enhance the rent of a ryot who has held for a period of twelve years, whether under pottah or not, and the parties cannot come to terms.

It appears to me that section 6 is objectionable, and ought to be repealed—

1st—because it interferes with the just rights of the zemindars, at least in the permanently-settled districts, by vesting rights of occupancy in the ryots, which had no previous existence.

2nd—because it tends to perpetuate small holdings, which must ultimately become injurious to the best interests of the country. A zemindar may be very willing to allow a ryot to occupy a few beegahs of land at a time when he cannot let it to any one else. But it must very much depreciate the property of the zemindar, if that ryot, by being allowed to occupy for twelve years, be held to have acquired such a right of occupancy for himself and his heirs as will prevent the zemindar from ever determining the tenancy, or taking the land into his own occupation, however much he may require it, or from letting it with other lands as part of a larger farm to a tenant with capital, who may be willing to take long lease and to lay out money in improvements. This may not be so much felt at the present moment as it will be hereafter;

3rd—because, by creating new rights of occupancy which did not exist before, it imposes upon the Courts of Justice the necessity of settling, in case of a dispute with the ryots who have acquired such rights, the rents which they are to pay, instead of leaving the parties to make their own arrangements, as they must have done if section 6 had not been passed.

If section 6 had not been passed, section 5 would have extended only to cases in which rights of occupancy existed according to the old law, and could

be proved. It is not because some old rights may exist without the means of proof that rights are to be created which never existed before, and in favour of ryots who never had any rights in the land at all, and that is what section 6 has done.

Minute by the Honourable Sir Barnes Peacock, Chief Justice of the High Court, dated the 31st March 1864.

If a ryot is entitled to hold not less than the fair value, there must be some fixed principles to guide the Courts in deciding what the rent is to be. To say that a ryot shall hold at a rent somewhat less than the landowner could obtain from a new tenant, would lead to infinite uncertainty and confusion, unless some specific rules be laid down for the guidance of the Courts in deciding how much less he is to pay. The rule of the English law, that every prescription must be certain, is founded upon good sense and reason, for, otherwise, there would be no rule; no two Judges would decide alike, and nothing but confusion and uncertainty would be the consequence. Therefore, a prescription for copy-holders to pay a fine of two years' rent *or less* for renewal, and a prescription to pay a penny *or thereabouts* for tithes, have been decided to be bad for uncertainty.

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If it be laid down by express law that a ryot having a right of occupancy is entitled to hold at a fair and equitable rent, there is a rule to go by; but the rent in such a case must be fair and equitable, as regards the landowner, as well as regards the tenant. To hold that a zemindar is bound to receive from a ryot who has held for 12 years (and who but for Act X would be a mere tenant from year to year or at will), a lower rate of rent than he could obtain from a new tenant cannot be fair and equitable to the zemindar, and, in my opinion, would be giving a construction to section 5, which would involve the greatest uncertainty as to how much lower the rent was intended to be, and further, would render it an unjust interference (at least in the permanently-settled districts) with the vested rights of the proprietors of estates, and a violation of the promise made to them at the time when they came under engagements with the Government.

Upon this I cannot do better than refer to the hypothetical case put by Mr. Muir in paragraph 25 of another valuable paper recorded by him on the 11th August 1863, "Note on the Minute of the Honourable the Lieutenant-Governor upon the rights of hereditary ryots, and the Board's proposals for amending section 6, Act X of 1859." He says—

"Twelve years ago, a landlord having, in the exercise of his legal rights, ejected a tenant-at-will, let his holding to another. At that period the landlord might have disposed of the land in any manner he chose. He might have appropriated it to his own use, or built upon it, or quarried the materials below the surface, or planted an orchard upon it, or he might have let it out for the growth of a particular staple, or on any other condition; in short, the land was his own to make the utmost possible use or gain out of it. But 12 years have elapsed, and all these rights have passed away. The ryot, whom he himself introduced, has become master of the land. The landlord has lost all control over it, and even his claim to rent is restricted. He cannot resume it for his own use; he cannot let it to any other tenant who would introduce the staples he desires to cultivate; he cannot raise the rent beyond the rates paid by hereditary cultivators in the vicinity. The person, whom he put in as a cultivator 12 years ago, has grown up into the privileged class, and the title thus created will descend indefinitely."

I have not had an opportunity of seeing the Minute of the Lieutenant-Governor above referred to, and am not acquainted with the precise views held by him, or the grounds upon which they are supported. But it must be always borne in mind that there is a great difference between the districts which are permanently settled and those which are not, so far as regards interference with vested rights.

It must be remarked that, although the Legislature by section 6 gave a right of occupancy as against zemindars, they did not give a similar right as against those who claimed through Government, *viz.*, purchasers at sales for arrears of revenue; for ryots who have held or occupied for 12 years do not form one of the exceptions contained in section 37 of Act XI of 1859, and are consequently liable to be ejected. (See the enactment at the commencement of the section and the proviso at the end of it.)

It is all very well, for the sake of protecting the revenue, to render void, as against a purchaser at a sale for arrears, incumbrances created by the defaulter; but it cannot be just to create by legislation new rights against a zemindar, which, for the sake of the revenue, are not allowed as against an auction-purchaser claiming through Government. Further, section 6 is general

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in its terms, and creates a right of occupancy as against a proprietor by a holding for 12 years under a farmer or dependant talukdar, or other person having only a temporary interest. The right of occupancy is given by section 6 without any reservation, although, by section 76, the pottah to be ordered by the Collector in a suit instituted by a ryot for a pottah, cannot extend beyond the temporary interest of the proprietor. At the end of the pottah, however, it would seem that the right of occupancy would still continue under section 6, and that a suit for a fresh pottah might be instituted.

Ryots who have held at fixed rates from the time of the permanent settlement are protected by sections 3 and 4, Act X of 1859, and I apprehend that the words "at fixed rates," in section 3, extend to rates depending upon fixed principles, "*id certum est quod certum reddi potest.*" But if there is any doubt as to that being a correct construction, a declaration to that effect might be inserted in any new Act that may be passed for amending Act X. In all other cases I would leave persons who claim a right of occupancy to prove it. If they can prove that they have a right of occupancy, but cannot prove that they hold at fixed rates, or that there is any fixed principle by which their rents are to be regulated, they ought to pay a fair and reasonable rate according to the provisions of section 5.

For the above reasons, I would repeal section 6, except as to cases in which a right under that section has been established by a decree of Court, or in which a suit shall, at the time when the amending Act is published, be pending for the purpose of establishing such a right. I say *at the time when the Act is published* (not *passed*); for, otherwise, if any considerable interval should elapse between the time of the publication and the passing of the Act, numerous suits would doubtless be instituted for the purpose of evading it.

If section 6 continue in force, it is impossible to foresee where the litigation created by it will end. In one of the cases recently tried before Mr. Grey, it took two months to record the evidence which was given in one suit for the purpose of showing what was a fair and equitable rent to be paid for a few beegahs of land. Each ryot has a right to have the evidence taken *de novo* in his own case; and if the right be insisted upon by every ryot who has occupied 12 years, whenever an attempt is made to enhance his rent, the Courts will be overwhelmed with vexatious litigation, and the landowner put to the greatest vexation and annoyance by the ryots to whom new rights have been given by section 6, and will probably be compelled to pay their revenue, or to have their estates sold for arrears before they can recover the rents due from their ryots. The Court was openly told in the argument on the review case "that litigation could not stop here."

If tenants from year to year, or tenants-at-will, cannot come to terms with the landowners as to the rents which they are to pay, their tenancies may be determined. I am quite sure that it will be far better to leave parties to make their own terms than to drive them into a Court of law to have that done for them which they are much better able to do for themselves. It is not the interest of the landowners to drive their ryots away by demanding exorbitant rates, and I would leave them, in cases where there are no better rights of occupancy than those given by section 6, to make their own bargains with their ryots.

There is another point. Landowners should be encouraged to grant leases for terms of years, and section 19 should be restricted to tenants holding from year to year, or at will. Tenants who have agreed to hold for terms which have not expired, should be excepted from the operation of the clause. It is useless for a landowner to grant a lease for a term of years, if the tenant may throw it up whenever he thinks fit. The advantage is all on one side. On the other hand, it is unreasonable that tenants holding from year to year, and not holding under engagements for fixed terms, should be liable to have their tenancies determined without reasonable notice.

I would enact that a ryot, who shall have held without an engagement for a fixed term, shall not be bound to quit, unless he be served with a notice, six months at least before the end of the current agricultural year, requiring him to quit at the end of such year. Provision for the service of such notice should be made similar to that contained in section 13.

I would also repeal section 17. If a zemindar is entitled to a fair rent, he ought to be at liberty to raise the rent whenever it is too low. The ryot is

sufficiently protected by the provisions of sections 3 and 4 where the rates are fixed, and by section 5 where the rates are not fixed. Section 5 enacts that the rate previously paid shall be deemed to be fair and equitable unless the contrary be shown. There are many cases in which the rent previously paid may be too low, and yet it may not fall within section 17. Suppose the proprietor of a large tract of uncultivated land let it out to numerous ryots in small quantities at a nominal or very low rent for 12 years, in order that the ryots may clear it from jungle and bring it into cultivation: at the end of the term, the proprietor ought to be able to raise the rent to the full value. Yet it would seem that, according to section 6, the ryots would acquire a right of occupancy, even though they may have held under pottahs, and the rent could not be enhanced under section 17, for the land will have been improved by the labour and at the expense of the ryot, and the neighbouring ryots are paying at the same rates.

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I would also repeal section 18. In lieu of sections 17 and 18, I would enact that ryots having a right of occupancy, but not holding at fixed rates, shall not be liable to enhancement of the rent previously paid, unless it shall appear that such rent is lower than the fair and reasonable value, or where the rent is payable according to the quantity of the land held, unless it can be proved by measurement that the quantity of land held is greater than that for which rent has been previously paid; and that ryots having a right of occupancy, but not holding at fixed rates, shall not be entitled to claim an abatement of rent unless it shall appear that the rent previously paid is higher than the fair and reasonable value, or where the rent is payable according to the quantity of land held, unless it shall be proved by measurement that the quantity of land held is less than that for which rent has been previously paid.

Whether a ryot pays more than the pergunnah rates (where there are any), or more than the rent paid for lands of a similar description and with similar advantages in the neighbourhood, are questions to be taken into consideration in determining whether the rent previously paid is lower than the fair market value, and *vice versâ*. But it may happen that all the rents in the neighbourhood are too high or too low, and in that case the rent ought not to be increased or decreased, as the case may be, merely because it is lower or higher than the rents of the neighbouring lands.

The mistake in sections 17 and 18 is in laying down, as a fixed rule of law, that which is merely matter of evidence.

If Act X be amended, I would add a clause allowing mesne profits to be recovered in the Collector's Court in suits for ejectment brought under section 23. At present the parties are driven to the regular Courts to recover mesne profits, and thus two suits are rendered necessary.

Consequent upon the repeal of section 6, I would repeal section 76 of the Act.

I observe that Mr. Muir, in the second paper to which I have before alluded, proposes to lay down certain principles by which a moderate rent in contradistinction to a rack-rent may be fixed for hereditary ryots. It appears to me that in the permanently-settled districts, it will be unjust to the landowners to lay down any such rule. If the ryots can show that they are entitled to hold at fixed rates, or at rates to be determined by fixed principles, their rights, as already shown, are protected. But if they merely prove that they have rights of occupancy, I think they are liable to pay a rent equal to the fair value of the use of the land, although they are not liable to be turned out of possession so long as they pay a fair and reasonable rent.

To avoid all doubt, I would declare that Act X of 1859 was not intended to debar ryots from availing themselves of any rights to which they can prove themselves to be legally entitled by custom or prescription.

The 31st March 1864. BARNES PEACOCK.

Minute by the Hon'ble Mr. Justice Sumbhoonath Pundit.

Minute by the Honourable Mr. Justice Sumbhoonath Pundit, dated the 6th April 1864.

No. 11.

With regard to the proposal for repealing sections 6 and 76, and for amending sections 17 and 19 of Act X of 1859, and also as regards the proposals of new provisions, I entirely concur with the Chief Justice.

2. If certain ryots had a right of occupancy before section 6 was passed, they will still enjoy the same after this section is repealed.

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3. When fair and reasonable rents are to be fixed by a Court of Justice, any increase in value created by the agency or at the expense of the ryot must, as a matter of course, be taken into consideration, and so, perhaps, if necessary, any extraordinary and tangible rise in the value of the produce, not caused by the agency or at the expense of the ryot, over and above the increased expense which the ryot is in such a case likely to incur.

4. I have no objection also to the amendment of section 18, if all the circumstances mentioned in that section are expected to be taken into consideration, whenever abatement is claimed by a tenant entitled to ask the same.

5. There can be no doubt that the Chief Justice intends these facts to be taken into consideration as matter of evidence.

The 6th April 1864. SUMBHOONATH PUNDIT.

No. 285, dated Simla, the 23rd May 1864.

From—E. C. BAYLEY, Esq., *Secretary to the Government of India*, HOME DEPT.,

To—*The Officiating Secretary to the Government of Bengal.*

Letter from E. C. Bayley, Esq., Secretary to the Government of India, to the Government of Bengal, No. 285, dated the 23rd May 1864.

No. 12.

I AM desired by the Governor General in Council to forward, for the information of His Honour the Lieutenant-Governor of Bengal, copies of Minutes recorded by the Hon'ble the Chief Justice of Bengal and the Hon'ble Mr. Justice Sumbhoonath Pundit, on the subject of the late decision of the High Court in the case of Hills *versus* Isher Ghose.

2. These Minutes have been forwarded to the Governor General in Council in consequence of a request conveyed to the Chief Justice in October of last year from the President in Council, that he would favour the Government of India with the opinion of the High Court as to the points in which the Court considered that Act X of 1859 required amendment. The Hon'ble the Chief Justice had, as His Honour is aware, called attention in one of his Judgments in the case above referred to, to certain difficulties which he described as arising from the provisions of the Act.

3. Assuming the existence of these difficulties, it is obvious that they do not extend beyond Bengal Proper, and His Excellency in Council would, therefore, be glad to have the Lieutenant-Governor's opinion on the proposals of the Chief Justice.

4. The Lieutenant-Governor will observe that the Chief Justice limits the application of the principles involved in the recent decision of the High Court to cultivators who have acquired a right of occupancy solely by twelve years' possession under section 6 of the Act, and who, but for Act X, would be merely tenants-at-will. Sir Barnes Peacock states that the decision does not apply to occupancy ryots claiming to pay either fixed rates of rent or rates calculable on fixed principles; and Mr. Justice Sumbhoonath adds that, if certain ryots had a right of occupancy before section 6 of Act X was passed, they would retain that right even if section 6 were repealed.

5. As regards tenants-at-will who, according to the Chief Justice's view, have been converted into occupancy ryots through the operation of section 6, Sir Barnes Peacock proposes certain amendments of Act X; as respects all other classes of cultivators, the Chief Justice suggests a legislative declaration that Act X of 1859 was not intended to debar ryots from availing themselves of any rights to which they can prove themselves to be legally entitled by custom or prescription.

6. It cannot be doubted that the Minutes of the learned Judges contain a correct exposition of the purport of the recent decision; but as these Minutes are in strictness extra-judicial, His Excellency in Council considers that it may perhaps be desirable, before legislation is attempted on any of the points adverted to by the Chief Justice, or on any others connected with Act X, to observe the actual course of decision followed by the Courts in Bengal on the important questions discussed in the case of Hills *versus* Isher Ghose.

7. If the Lieutenant-Governor of Bengal concurs in this view, I am desired to request that His Honour will, from time to time, report to the Government of India the character and tenor of the conclusions arrived at on these questions by the High Court and the other Courts of the territories under His Honour's government, and that he will state the practical effect of the course of decision on the position of persons enjoying, or claiming, interest in the soil.

No. 1811, dated the 7th June 1864.

Letter from F. B. Peacock, Esq., Officiating Registrar of the High Court, No. 1811, dated the 7th June 1864.

From—F. B. PEACOCK, Esq. *Offg. Registrar of the High Court of Judicature at Fort William in Bengal,*

To—*The Secretary to the Government of India,* HOME DEPARTMENT.

Leg. Pros., 12th July 1864, Nos. 4—7.

No. 4.

I AM directed to forward, for the purpose of being laid before His Excellency the Governor General in Council, the accompanying Minutes recorded on Act X of 1859, by Mr. Justice Campbell and Mr. Justice Seton-Karr.

Minute in reply to Government letter No. 6453 of 12th October 1863, calling for an opinion regarding the changes required in Act X of 1859.

Minute by the Honourable Mr. Justice G. Campbell, dated the 1st June 1864.

No. 5.

ACT X of 1859 was intended for the most part as a consolidation of the existing law and custom, and no serious question seems to have since arisen as to the general principles by which the holdings of ryots paying fixed rates and of tenants-at-will are regulated. It may also be assumed, as laid down by the Chief Justice, that ryots whose payments are regulated by fixed rules are to be classed with ryots paying fixed rates. Many of the details of the Act are somewhat loosely drawn and require some revision, but this would be best done by a Committee sitting for the purpose. It is only as respects the numerous class of ryots having rights of occupancy, but holding at variable rates, that very serious question regarding the propriety of the provision of the Act, and serious doubt as to its definiteness and its application, have occurred; it is on this subject that the present reference has arisen, and to this I presume that we may for the present confine ourselves.

2. As regards, then, the rights of the great mass of the people, the essence of the Act may be considered to lie (after the simple and indisputable declaration of section 5) in sections 6, 17, 18, and 76. The main question, then, on which we are to give our opinion is, how far these sections should be amended. The Honourable Chief Justice appears to think that they should be simply repealed. In that opinion I cannot concur, for the effect of that repeal would be either to abrogate the rights of the people, or to relegate them to that judicial uncertainty from which it was the object of Act X to rescue them.

3. The state of things out of which the present question has arisen is new to the country. Under the old system the payments of the ryots were regulated by custom, not by special contract, in each case; and land was not ordinarily exposed to commercial competition. In fact, till the vacuum in the occupation of the soil caused by the civil wars and mis-government to which we succeeded, was filled by an advancing population, ryots were rich, and zemindars were always anxious to get new ryots without pressing for enhanced rates. They looked for their profits to numbers, and to the increased breadth of cultivation at the customary rates—not to higher rates. Now that the population has filled the vacuum, the question takes another form; and, precipitated as that question has been by the circumstances arising out of the indigo disputes, it has come upon us suddenly as it were. Hence, exact precedents cannot be found; and, that being so, it seems to me that the question may be better settled legislatively than judicially. Indeed, past experience has shown that the judicial decisions of many years have so little settled the matter, and are in so many respects contradictory, that legislation was very necessary. Judical opinion is hopelessly divided; and any decision would probably only be that of a majority, one way or other.

4. To the legislation of Act X on this subject two objections are taken in respect to two points in which there has been, or is alleged to have been, innovation. The subject, in fact, naturally divides itself into these two questions,—*first*, what constitute sa right of occupancy; *second*, how are the payments of occupancy ryots to be fixed. On the first question the twelve years' rule of Act X is definite enough; but it is objected that it is a rule which has given occupancy rights to a large class of ryots who were not entitled to such rights. With regard to the second question, the objection to the provisions of section 17 is that they are indefinite, inasmuch as, while laying down the cases to which the right to enhance the payment of the ryots is limited, they nowhere lay down the *measure* of that enhancement, that point being left to the Courts

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without any rule beyond the very indefinite rule that the rent shall be "fair and equitable;" much difference of opinion has consequently arisen. It is also said, with great practical truth, that by declaring a right of enhancement without fixing limit or measure to that right, landlords have been incited to exercise a right which, hitherto, they either never claimed or never exercised; and that, in practice, a disposition to press for enhancement has arisen, which would not have been the case had the law remained as before. There is much force in this last observation, but the evil, if it be an evil, is already done. We could not, by withdrawing the enactment now, lay the question of enhancement; that must be settled one way or other.

5. I will first deal with the test of the right of occupancy. I must premise my remarks by observing that I do not think it can be admitted that this is a mere question of "tenant right." If it be once assumed that the word "ryot" means tenant-farmer in the ordinary English sense, and that the payments made by him are simply "rent" in the strict sense of political economists, we almost beg the whole question. The expediency of limiting the discretion of an absolute proprietor by interference for the protection of the simple tenants, to whom he has leased the land, may well be doubted. But the word 'ryot*' does not mean tenant; and both the position of the ryot and the incidents of his tenure are entirely different from those of an English tenant-farmer. To my mind the real question is, whether the rights of the zemindar are, as between him and the ryots, those of absolute unqualified proprietorship; or whether, in fact, he is but a limited proprietor holding superior rights which are not inconsistent with distinct rights in the soil held by another class, who are, in fact, its possessors on an hereditary tenure, and who only owe to him the dues prescribed by law and custom. Is, in fact in English phrase, the zemindar the Lord of the Manor, and are the ryots the copy-holders? Or is zemindar the sole proprietor to the exclusion of every one else? Both in the early Regulations and in Act X there is a clear distinction between the ryottee lands which the zemindars held as superior over the ryots, and the special lands which they held in absolute right called "seer." In the latter no ryot rights are acknowledged; it is only with the former or ryottee lands that we have to deal.

* The word in its plural Arabic form is well known in England when applied to the Rayahs or "Reaya" of the Ottoman Dominions. It has never, I believe, been translated 'tenant' when met with in that form.

6. The claim on the part of the zemindars to sole proprietorship of these lands is founded on the early Regulations in which they are called "proprietors" or "actual proprietors" of their estates. But when we read the whole of those Regulations, it seems to me that, in truth, the proprietorship which was then given to the zemindars was not a declaration of sole proprietorship as between them and the ryots, but only an acknowledgment of a proprietary and permanent interest in the soil, as between them and the Government. The question up to that time had been, not as to the right of the zemindars to turn out the ryots, but as to the right of the Government to turn out the zemindars. It was disputed whether the zemindars were themselves mere farmers and tenants-at-will under the Government, or whether they had any greater right; that question was then settled by the laws which, as between them and the Government, conferred on them permanent rights to the exclusion or limitation of the rights of Government. The rights of the ryots were not only by implication and by the whole spirit of the Regulations reserved, but they were so by express words†; although those rights were unfortunately not then sufficiently defined and recorded, the intention to do so was repeatedly declared, and the right to do so was reserved by legislative provisions. Government surrendered to the zemindars its own claims, not the rights of the ryots, whose claim to the possession of the soil and to a share in the surplus produce remain unaltered by the enactments in favour of the zemindars.

† See Regulation I of 1793, section 8, clause 1.
Regulation VIII of 1793, section 60, clause 2, and other passages.

7. The preamble of Act LI of 1795, enacted for the province of Benares, gives a good résumé of the various attempts made to record and protect the rights of the ryots. In truth, these rights are generally more ancient and better established than those of the zemindars; and whatever analogy may be derived from the exceptional and peculiar state of things in England, where a foreign conquest and colonization, peculiar laws against sub-infeudation, and chiefly, in modern days, the vast increase of capital, machinery and manu-

factures have dissevered the peasantry from permanent rights in the soil, and placed them in the position of mere labourers for hire—(a position not without its social and political disadvantages); it is notorious that in every other country in the world, and more specially in all countries occupied by the Aryan race, the right to the possession of the great mass of the soil is vested in the peasantry, and the rights of superior holders, where there are such holders, are limited to tributary and customary payments. Even in countries where the peasants had been reduced to the most abject condition, where they had become the serfs of the soil, as in the Russian territories, it has been a surprise to Western Europe to find that the serfs had never lost their rights in the soil. "I am yours," says a Russian peasant, "but the land is mine." It was found that the attempt to give the peasants liberty without land would be considered a gross invasion of their rights, and would have led to revolution. So much is this the case that in Russia all parties seem to be quite agreed that the emancipated peasants must have some share of the land as a permanent right, and the only question is,—how much and on what terms? Nowhere is the peasants' rights more distinctly and universally present than in India. We find everywhere the same class of peasant possessors of the soil, whether they be the ryots of Madras and Bombay, holding individually direct of Government, the cultivating village communities of Northern India, the mouroosee or chapperband ryots of a great part of Hindustan, or the khoodkast resident ryots of Bengal and of the old Regulations.

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8. The original state of the Hindu polity I take to have been, that the produce of the soil was shared by two parties only,—the raja and the ryot; the raja of the old Hindu days being a petty prince of limited territory. When great conquering empires overcame the rajas, two things might and did happen: the rajas might be superseded and extinguished altogether, and the Government might deal direct with the ryots; or the rajas might be rendered tributary and compelled to pay the greater portion of their share of the profits in the shape of land revenue. As the conquering Government became permanent and organised, the rajas were gradually swept away, and the first-mentioned system came into vogue. But again, in the decadence of the empire, when the enfeebled Government had difficulty in dealing directly with the mass of its subjects, a class of farmers or zemindars were sometimes interposed to contract with Government for the collection. This was especially the case in the decadence of the rule of the Moghuls, who had particularly favoured some of the Native tribes of Rajputs, Rangars (converted Rajputs), and others, and who granted to them, or suffered to spring up, superior tenures, which became, more or less, hereditary. To them and other middlemen, the more ancient of the zemindars whom we found in existence trace their origin. But through all these changes the ryots were still the ryots, their position and rights remained without essential alteration.

9. In truth, I take it to be acknowledged that the rights of the ryots were declared, and the definition and protection of those rights were promised at the time of the permanent settlement. But it is said that whatever the rights of the ryots of that day, this does not affect the question of the rights of ryots of the present day, unless every ryot, claiming such rights, can prove that he and his ancestors have held uninterruptedly from the time of the permanent settlement. In my opinion the law and custom affecting ryots was not altered by the permanent settlement, but remained as before, being, in the absence of written definition, the unwritten common law of the country; and the circumstances and incidents which made a man a ryot, and vested in him certain rights as a ryot, before the settlement, would still give a man the same rights after the settlement; the whole being regulated, not by special contract in every case, but more frequently by the general social *quasi*-contract,—the custom of the country known to both parties, and in the knowledge and faith of which both acted.

10. As regards, then, the modern ryot, the question, I think, divides itself into two,—*first*, how is the onus of proving a descent from the ryot of the time of the permanent settlement to be adjusted, and if this is proved, what is the measure of the rights of those old ryots; *second*, what are the rights of ryots of a later date.

It is quite clear that the ryots of the last century have not died out and have not been succeeded by another race. The ryots of to-day are, no

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doubt in the main, the descendants of the ryots of the last century. It would seem then very hard if, in this country of rapid cycles and perishable evidence, of floods and storms, and fields without fences, because the Government unfortunately failed to perform that promise of recording the rights of the ryots which the early Regulations certainly put forth, there should now, near a hundred years after, be thrown, on a poor and illiterate race, the whole onus of making out, by positive proof, their continued possession from that ancient time. In other portions of Act X, and in regard to holders of a better and more independent class, the principle has been most justly recognised (and the justice of it has not, I think, been contested), that some provision must be made to counterbalance the disadvantage at which the inferior holders are placed by want of record; and that provision has been made by enacting that the proof of holding for a certain moderate time shall shift the onus of proof, and that such holders shall be presumed to be ancient (that is, from or before the permanent settlement), unless the zemindar shall prove the contrary. Some such provision must surely, under any circumstances be made for the occupancy ryots. It is impossible, with fairness, to say—"You have proved by "living witnesses that you have held for 30 or 40 years. Bnt the living proof "does not go further back; there are no records, there is nothing to show that "you have held from the permanent settlement, therefore you have no rights, "and must be ejected. We know nothing of your tradition that your ancestors "have held for two thousand years, that they were the proprietors who first "tilled the soil; you have not proved it, and you must be turned out." I cannot doubt that if the definite twelve years' rule were to be abandoned, some rule regarding the onus of proof must be substituted; and that every man who has held, for, say, 12 or 20 years, must be presumed to have the status of an occupancy ryot of the time of the permanent settlement, till the contrary is proved. His payments may have, more or less, varied with circumstances; he may not have the rights of a mokurrari ryot whose rent is fixed for ever. But still as regards the rights of possession and occupancy he should take date as an ancient hereditary ryot. Up to the time of the permanent settlement in Bengal, and to the present day in other parts of India, neither the payments of the zemindars to Government, nor the payments of ryots to the zemindars, were fixed, they remained variable. As respects the payments of the zemindars to Government, there has been absolutely no permanent fixed rate; the proprietary right and consequent claim to retain part of the surplus produce, has been fully acknowledged; but the Government assessment has been fixed at discretion, subject only to the moral and political obligation of moderation; in fact, the assessment must be "fair and equitable." The payments of the ryots have been somewhat better defined by customary rules for each pergunnah or local division, and those rules usually hold good for a long series of years. But still they are in the course of time varied with variation in the Government assessment and in the political and social situation; with the changes of system, the variations in produce and in the value of money and produce. In Bengal, when the Government assessment was fixed (the right to protect the ryots by definite rules being by legislative declaration reserved, but not then exercised), it remained an open question whether the payments of the ryots should also be fixed, or by what rules they should be regulated. Those ryots who have been so fortunate as to hold on without variation are now protected for ever. But more frequently, in the absence of fixed rule, with the increase of more valuable staples, the change of masters from time to time, and the great progress of the country, changes in, and commutation of the rates (often originally paid in grain), were effected by mutual arrangement, and, doubtless, some share of the increased value was obtained by the zemindars. In the course of these changes the old pergunnah rates have been broken in upon, and often almost obliterated. Hence the ryots hold at rates so far variable, without absolute fixed rule other than that the rates shall be customary, and fair, and equitable. A great Government converts these terms into fixed rule in dealing with the zemindars of temporarily-settled districts; but when each zemindar has to deal with his own ryots, there is no rule at all, and great uncertainty results. That, then, is the position of the occupancy ryots who descend from the ryots of the days of the permanent settlement, and for whom it still remains to do what was then promised, *viz.*, to define and protect their rights.

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11. Next as regards ryots whose tenures are shown to be of date posterior to the permanent settlement. These tenures may be of two kinds—

1st—Land reclaimed from the waste.

2nd—Cultivated land occupied by new ryots.

There is very much in the custom of India to show that the ryots of each village have a prior claim to cultivate the waste of the village, and to take up land abandoned by other ryots, and, so cultivating or taking without special stipulation, to hold on the same terms as those on which they have their original holdings; but to simplify matters I will now suppose that we are dealing with new tenants.

It is also probable that, whenever there has been transfer by mutual arrangement from one ryot to another, without the interference of the zemindar, that transfer does not break the continuity of the holding; for, though the question of the right of an occupancy ryot to transfer his holding without the consent of the zemindar is one not settled, and considered to depend on the custom of each district, it is notorious that thousands of transfers for value have, in fact, taken place; and when such is the fact, we may generally presume either that the zemindar consented, or that he did not contest the validity of the transfer, and allowed the in-coming ryots to take possession unchallenged. I take, however, simply the case of new ryots settled by arrangement with the zemindar either on waste lands, or on cultivated lands abandoned by the former holder.

The question of right of occupancy, arising by prescription of time, I reserve as affecting both classes of ryots.

12. First, then, as respects the waste lands reclaimed, there can, I think, be no greater mistake than that by which, in reliance on English ideas, the zemindar is represented as the capitalist who prepares the land at great expense, and employs the ryots to clear it as "coolies," that word expressing, as I understand it, labourers receiving wages. What, in fact, is the ordinary course in this country? Does the zemindar clear and prepare the land, and then, having divided it into farms, look out for tenants? By no means. He ordinarily does nothing of the kind; he hires no coolies whatever. What he does is this: He makes an arrangement with ryots, who are in no sense coolies, but who are, in their own small way, capitalists,—investing or borrowing so much capital as enables them to stock (in the small Indian sense of a pair of bullocks and a plough) a farm, and to subsist till the land becomes productive; and the bargain is usually to this effect:—You are to take waste land and to break it up; you are to pay no rent, or a very small rent, the first three years; an increased rent the next three years; and thenceforth a further increased rent more nearly approaching to the customary rent of other ryots similarly situated. There is, most commonly, no express limit to the term of the holding; and where the holding is not determined by the contract, that ryot, who has broken up the waste by his own labour and at his own expense, has, in my opinion, according to the custom and social *quasi*-contract of the country, acquired a right of occupancy. "The land," says Menu, "is his who first tilled it;" and so far as the right of occupancy is concerned, I think that, in the absence of stipulation to the contrary, that is still the law of the country. Wherever it can be shown that the circumstances are different; that, in truth, the zemindar has broken up the land at his own expense, or has paid the ryot wages for doing so, then I think that the right of occupancy, founded on the cultivation of the waste, does not arise; but such cases are, I take it, very rare.

13. Next, let us take the case of land left vacant by the retirement of the former ryot, and lying unoccupied on the zemindar's hands. The zemindar invites another ryot from a neighbouring village to take the land at the old rates, or it may be at slightly enhanced rates. The ryot agrees to do so; and accordingly migrates, builds a house, re-cultivates the land, and settles himself in his new village as a resident ryot. Nothing has been stipulated as to the term of his holding; he has only agreed to pay a certain rent, and he pays it from year to year, leaving it to custom or mutual good understanding to settle the rest. I find that there is great weight of opinion of the officers best acquainted with the customs of the people of Bengal, in favour of the belief that, as soon as a ryot is settled, as above described, at the invitation of the

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landlord, without stipulation limiting the term of his occupancy, he has become a resident or khudkhast ryot, in the same sense in which these terms are taken from the custom of the country in the earlier Regulations; and that he has a claim to continued occupation of the land so long as he pays the rent, that is, the rent which he originally stipulated to pay, and any increase which the custom may, from time to time, warrant.

14. Again, in either of the two last cases, supposing that the circumstances of the original entry did not at once create a right of occupancy, but that a ryot originally a tenant-at-will holds on from year to year, and from generation to generation, without express stipulation, and paying the customary rent,—in how long a time, or in how many generations, does he acquire, by the prescription of the country, a right of occupancy? To this no definite answer can be given. It can but be said that there is a general tendency to a prescription in favour of old, and what are termed "mouroosee" or hereditary holdings.

15. This being then the state of things; descendants of the ancient ryots having a strong right of occupancy at customary rates, and a strong claim to a provision to relieve them from the whole burden of the onus of proof; the circumstances under which many more modern ryots cleared and acquired their holdings giving them similar claims; the custom and feelings of the country much favouring the acquisition of such right by prescription and hereditary succession; and there being much opinion and strong argument in favour of the view that every man settled as a resident ryot, without stipulation to the contrary, acquired *ipso facto* a right of occupancy; it may be said that the 12 years' rule of section 6 was a compromise,—a compromise which has its somewhat obscure origin in certain decisions and instructions of date previous to Act X, and which, being then in a sort of half-pledged condition, was adopted and made into positive law by Act X.

16. Like most compromises, this rule cannot be supported by strict reasoning. No doubt, in the custom of the country, there is no good reason why 11 years and 11 months should establish no prescription, and 12 years should establish it. But every line must be drawn somewhere; and the term was probably borrowed by analogy from the 12 years' limitation of our Regulations. It was a compromise which had already obtained so much acquiescence, and had so far been introduced in practice that, at the time of the passing of the Act, no one seems to have opposed it. The whole question is one which, as I have said, arises out of a state of facts now undergoing rapid alteration and which can never be settled by any rule which is not a compromise. It is but a weighing of opposing claims which we can only compromise. In reality, then, the only question is—Whether the 12 years' rule is the best compromise, or whether a better can be suggested. But before going further we must look to the right of enhancement; for by that, the real character and value of the right of occupancy must be measured.

17. I quite think with the Hon'ble the Chief Justice, that the claims of occupant ryots to a limitation of their payments are, under the present law, rendered, to a great degree, bad and difficult to enforce on account of uncertainty. But I would remedy that evil and injustice, not by removing all protection of the law and leaving the ryots liable to pay the fullest rack-rent, but by defining and rendering certain those claims whatever they are. I understand a rack-rent to be simply the market value,—the highest price which the highest bidder will give for land exposed to competition in the market,—the term rack-rent being in our language more especially applied to the high rates of rent obtained by competition among a numerous cotter tenantry eager for land, in a thickly-peopled country where agriculture is almost the sole resource of the people. In this sense I understand the fair market value of the Chief Justice to be simply what would be called rack-rent in Ireland. I do not think that it would be fair to the great majority of occupancy ryots to compel them to pay such a rent; and, I think, that if they are liable to pay it, their right of occupancy is only a delusion to them, and a hindrance to others, and that the sooner it is abolished the better.

18. Throughout the Chief Justice's Minute, he seems always to assume, and take for granted, that, before Act X, the occupancy ryot, with whom he is dealing, had no rights whatever; that he is simply a tenant-at-will who

has held for 12 years, and whom section 6 of Act X has suddenly converted into an occupancy ryot. That again seems to be almost to beg the whole question, and from that view I have shown above that I dissent. On the supposition that we are to read Act X, as creating by clause 6 an entirely new protection for mere tenants, I have no doubt that its provisions will not admit of any construction more favourable to the tenant than that put on it by the Chief Justice; that the Act conferring new rights must be strictly construed, and that the tenant on whom right of occupancy is conferred gets that only, and would be liable to pay the full market or rack-rent. But to my mind it is quite clear that Act X was not intended to create new rights; that section 6 is declaratory, and covers all classes of occupancy ryots, among whom the mere 12-years men are only the latest and rarest class; and that we cannot fairly read section 17 by the light of a construction of section 6 which the framers of the Act never intended it to bear, and which the words do not, in their ordinary sense, bear; for they do not run in the enacting form—"Every ryot who has, &c., *shall have a right of occupancy,*" but in the declaratory form—"Every ryot who has, &c., *has* a right of occupancy." I conceive, therefore, that indefinite as is section 17 in regard to the measure of enhancement, and as is section 5 in regard to the rate of rent, section 17 must still always be read with the qualification of "fair and equitable" prescribed by section 5,—that is, the enhancement shall not go beyond what is fair and equitable. And fair and equitable, I consider to be, not the market rack-rent, but the rent or payment which, with reference to the previous position of the ryot and his prescriptive right to share the surplus produce or profit, he ought to pay.

19. I think that all the facts most clearly show that, hitherto, the great mass of occupancy ryots have not paid a rack-rent, but have, in truth, enjoyed a very large share of the surplus produce. I think they have done so in their capacity of prescriptive possessors, and part-proprietors of the soil; I also think that, in very many cases, the land was originally brought into its present state of culturability (if I may coin a word) and productiveness by the labour and capital of the ryot, expended in clearing and improving it; and that to so much of the surplus produce as results from the labour and capital so sunk, the occupant ryot alone is entitled. Without, therefore, denying that there may be some cases of ryots, non-resident and the like, who were really tenants-at-will converted into occupant ryots by the terms of the declaration contained in section 6, and who, having originally paid full rack-rent, are still liable to the enhanced rack-rent, which the state of the land market has created; I say that the vast majority of occupant ryots fall under different categories; and that some better provision than the limit of market rack-rent must be made for their protection.

20. The fact is that the general term "occupancy ryots" includes many grades of various degree of right. It would be impossible, with justice, to measure the rights of the ancient descendant of the old allodial proprietors of a thousand (or for aught we know five thousand) years standing, by the same standard as those of the 12 years' tenant of yesterday. Therefore, in my opinion, no rule, giving any uniform percentage of the surplus produce to all occupancy ryots would meet the justice of the case. In my view each ryot should remain in the same position relatively towards his zemindar, and comparatively towards other ryots which he has hitherto held; as the rent is only to be enhanced for certain causes, it should only be enhanced in proportion as those causes operate. Take the law as it now stands: a ryot of a superior class has, from ancient times, paid a rent which leaves to him half the surplus produce; in other words, he pays half the rack-rent; grain has hitherto sold at 40 seers per rupee, so long as it so remains he is safe,—his rent cannot be enhanced. But suppose there is the slightest possible increase in the value of produce, the grain now sells at 39 seers per rupee, the rent is liable to enhancement. But ought it on that account to be at once run up to rack-rates, ought the half of the surplus produce, hitherto enjoyed by the ryot, to be confiscated at a blow? I think not. In my opinion the enhancement resulting from the prescribed cause should, as I have said, only be awarded in the same degree in which the cause has operated; the rule of proportion ought to be followed as the only rule equally fair to all classes; that, I think,

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is the theory on which any settlement should be based, in whatever form it may be practically applied.

21. As between zemindar and ryot, it seems to me that the permanent settlement does not place the zemindar in a higher position as regards the ryot than that he holds in the temporarily-settled districts, but rather, on the contrary, that, as the right of the Government periodically to revise and enhance the assessment of the zemindar gives him a strong claim to revise the assessment of his ryot; so, on the other hand, the permanent limitation of the Government demand on the zemindar, and the reservation in favour of the ryot made at the time, throw very strongly on the Legislature the duty of limiting the demand on the ryots possessing rights in the soil; and I very much feel that a settlement of this very important subject should be a necessary part of any plan for an extension of the permanent settlement. There is an idea prevalent in Bengal, which may, perhaps, have influenced the Chief Justice's remarks (see his Minute above), that the landholders of the North-Western Provinces are still mere farmers; this, of course, is altogether a mistake. Their proprietary rights are as clearly acknowledged as those in Bengal; the only difference is that their assessment, instead of being fixed, is liable to be periodically revised, under certain rules by which their payment are regulated with reference to the various considerations which enter into a settlement, and in proportion to the increase of assets. I would simply have it that the payments of ryots possessed of rights should be similarly regulated; and eventually that those payments, whether of the superior or of the inferior holders, should be commuted into a fixed annual sum payable for ever.

22. To come, then, to the measures which I would recommend for the amendment of Act X and settlement of this question.

On the whole, I do not think that there is sufficient ground for reviving the claim of modern resident ryots irrespective of prescription of time, which Act X, by its silence, may be considered to have negatived.

Again, while much may be said on the part of those resident ryots in favour of a rule not less liberal to them than the 12-years' rule, still the right of occupancy by mere settlement being abandoned, and the 12-years' rule being a compromise not supported in its letter by any strict law or custom, I would recommend a further compromise, *viz.*, on the one hand, the abandonment of the 12-years' rule for a longer and better established prescription; and on the other hand, the better protection, definition, and consolidation of the claims of those ryots whose right of occupancy stands this stricter test. In fact, I would limit the rights of sub-proprietory occupancy to a class whose claims are more indubitable than that of some of those now classed as occupant ryots; but I would render those rights more tangible and more secure; would acknowledge them as strictly, in every sense of the word, property; and would declare them to be freely transferable, and capable of being in every way dealt with, as property.

23. For this purpose I would substitute for section 6 of Act X of 1859, provisions to the following effect:—

The following classes of ryots have the right of occupancy—

Ryots who have held the land from time immemorial.

Ryots who first cultivated the waste at their own expense, without express stipulation limiting the term of their tenure.

Resident ryots who have held the land for thirty years; or who having held for more than twelve years, not less than two transfers by succession or purchase have occurred in their tenures.

Every ryot who has held for twelve years shall be deemed to have the right of occupancy, unless the contrary be proved.

Every ryot having right of occupancy may freely sell or otherwise deal with his land, provided that no balance be due from him.

In making any such change of the law provision would, no doubt, be made, as the Chief Justice proposes, for saving those ryots' rights which have been judicially declared under the existing law, as set forth in the present section 6.

24. To section 17 I would add provisos to the following effect:—

As regards enhancement to the prevailing rate payable by the same class of ryots, I would add, by way of precaution,—"Provided that those ryots only

"shall be deemed to be of the same class who are, so far as can be ascertained, "the same or similar in respect of—

"*1st*—Origin of tenure.
"*2nd*—The rate paid in time past."

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As regards increase in the value of produce or productive powers I would add—"Provided that the rent shall not be enhanced in a greater proportion "than the increase in the value of the produce or productive powers of the "land, as compared to the former value of the produce or former productive "power."

25. For facility of calculation I would declare that certain common kinds of produce only should be taken as the standard for calculating the value of produce in each district from year to year, and would officially strike by a jury and record the average market value of such crops in each district for each year.

All calculations regarding the value of produce, and consequent increase or decrease of rent, would then be referred to this official standard; and would be decided thereby, without any evidence whatever on the point of value of produce.

26. I would then, if possible, add provisions to facilitate the commutation of the variable rate into a rate fixed for ever. For this purpose the general principles which I would suggest, are—

That whenever the zemindar wishes to fix the rate for ever, at the average rent payable during five years last past, he shall be entitled to do so. That whenever the ryot wishes to commute, by paying for ever a rate 50 per cent. in excess of the maximum rate payable under the abovementioned provisions, or payable at any time during the last five years, he shall be entitled to do so. That in all other cases, if both parties consent, the Collector may and shall, with the assistance of assessors, fix a fair and equitable rent in excess of the present rent, to be paid for ever in lieu of all claim to a variable rent.

Provision would be made for disallowing the right to claim a commuted permanent payment, when special circumstances of probable immediate increase or decrease would render the commutation rules manifestly unfair and inequitable.

27. As respects political and social expediency, I may add one word, *viz.*, this, that it seems to me that in this country the great object is not by legislation to promote the holding of land by one class or by another class, but only to ascertain and make clear who is the owner or who are the owners in different degrees, and what are their respective rights; and more especially who has the actual tangible right of occupancy and possessory ownership; so that a man with money in his hand, may know with whom to deal. It is, undoubtedly, an evil of the very greatest magnitude, and the greatest possible obstacle to all progress, that, in so great part of India, the rights in the land are so little defined, so split up among different claimants, and, as it were, so frittered away, that it is impossible with safety to obtain from any man unquestionable right to the use and possession of the soil. If a man buys from the zemindar the ryot may keep him out of possession; if he buys of the ryot the zemindar may deny the right to transfer. If he buys the consent of both, he is still subject to an utterly undefined liability to enhancement of ground-rent; besides which some middleman or half a dozen middlemen and dormant partners and claimants of all kinds start up, and he is involved in a dozen law-suits. Therefore, with a view to the progress of the country, I conceive that our legislation should be, above all things, directed to render certain and to record these rights; to render absolute the right of the zemindar where it ought to be absolute; to render certain, definite, and transferable the right of the ryot where he has a right; and to fix his payments by rule so certain that a ryottee holding may be, for purposes of production and progress, as good as an absolute free-hold property, or rather, under the circumstances of this country, so far better,—as the possession of a ryottee tenure requires less capital than a free-hold, great portion of the value being represented by a fixed annual payment which an increasing produce, obtained by an improving holder, may render easy.

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28. It is by no means the case in this country that the improving holder is necessarily or usually the large zemindar.

That is another theory borrowed from a totally different state of things in a peculiar country of great capitalists. Even there it seems not to be quite universally admitted. And in this country it is as yet absolutely and almost universally false in fact. The great zemindar, as a rule (and the exceptions are most rare), does not spend a farthing on the improvement of his estate. He neither himself cultivates and introduces an improved agriculture, nor does he prepare farms for his tenants, build farm-houses, fence fields, drain and plant,—he does nothing whatever of all this, he performs none of the functions of a landlord in the English sense, he merely permits ryots to cultivate at their own expense, and takes from them the dues to which the law entitles him, or more if he can get it.

So far as I have been able to see and learn, the only really improving class among Native agriculturists are the small holders, the better class of ryots at easy fixed rents in prosperous parts of the country, and small maafidars, putnidars, and the like, who carry on cultivation for the most part on their own account. Men of such classes are, I understand, very numerous in some districts of Lower Bengal; and, to take a well-known instance, by them, not by great zemindars,—has a great sugar production been introduced of late years by planting date trees, a species of culture which requires some outlay of capital, since the trees produce nothing for several years.

29. Even as regards European "plantation" (which it is, without doubt, so desirable to encourage), I believe it is notorious that, as they are circumstanced in this country, it is rather commercially, and as manufacturers than as agriculturists, that Europeans can succeed and do good. To take the land into their own hands and cultivate it is a system which never pays. Give them the most absolute right, and they must still let most of the land out to ryots after all. They may as merchants, with great advantage, advance money for an improved produce; they may, with still greater advantage, manufacture the indigo-plant or the uncleaned cotton from the pod, into chests of indigo and bales of clean-pressed cotton; but for the cultivation they must mainly trust to the ryots. Among ryots, the better class of ryot, with a tenure which gives him some character, some vigour, and some command of funds, will answer their purpose better than the wretched rack-rented tenant-at-will, without funds and without credit,—who lives from hand to mouth, and to whom everything must be advanced. In fact, if we are ever to get rid of the system of advances, to which so many objections are taken, it must be by the improvement of the condition of the ryots.

30. In my opinion then, not only justice but also expediency point to a clear recognition and definition of the claims of those occupancy ryots whose rights are strongly marked in the custom and prescriptive law of the country. I think that if, as I propose, the ryots were clearly separated into two classes, one having distinct tangible and transferable rights and liable only to certain payments, the other having no rights at all, there would still be ample room in the land held by the latter class for all the improvements which either zemindars or planters are likely to introduce by direct agriculture for many years to come; and I believe that, by the absorption of unsuccessful occupancy ryots, and the increase of successful ryots, we should come to larger farms and larger holdings quite as quickly as the conditions and circumstances of the country require. It is, on all hands, acknowledged to be the fact that, with or without right, the great peasant population of Bengal has, for long, held the land at very low rates far below the market rack-rent. Is it possible that those rates can be suddenly trebled or quadrupled all round without creating, by so enormous a social revolution, terrible heart-burnings, discontent, resistance among those numerous millions? Is such a state of things compatible either with quiet government, or with the permanent interest of those who must after all depend on the labour of the ryots? I have heard an experienced officer, in a high executive post, very truly observe that in every disturbance the loose mob of towns and the like must almost be against the Government as guardians of order; that the strength of a foreign Government is in the passive content of the agricultural population. What, then, if we alienate these latter? If it be

thought that the legal right is on the side of the zemindar; still, whatever we do to enforce that right, for the sake of all parties, let us do it with due regard to not unreasonable feelings and expectations of others.

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31. I forbear from, here, going into the large question of registration and record of rights which will, probably, be a necessary part of any final settlement of the matter; but it is, in itself, too large a subject to be treated as an amendment of Act X.

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32. This further I will say that I think it, of all things, most desirable that the question which gave rise to this reference should be settled quickly one way or other. Of all things do not let the festering sore continue to enlarge, and more and more to irritate. Do not let a class question grow into prolonged class hostility. If the declaration that occupancy ryots have no beneficial interest or right to share in the profits, nothing but the barest right of occupancy; that the settlement of 1793 made the zemindars sole proprietors of the whole of the surplus produce or rent; if that be considered to be the best and fairest settlement, then let that declaration be affirmed by the Legislature; let there not be continued uncertainty and hope of an opposite declaration by other Judges holding different views of the law. It would probably be better that the law should thus be rendered certain and the parties should be left to the arrangements which mutual self-interest may dictate than that there should be continued contention, dispute, and uncertainty. On the contrary, if that declaration be thought not sufficient and not fair to the ryots, then let it be declared what is fair; let the prescriptive right be put in more certain and positive form, and let there be an end to the heart-burning, which an uncertain right occasions. Every day adds to the evil, leads to fresh complications, to greater ill-will, and renders more difficult such an equitable settlement as may, in the end (when passions have subsided), command the assent of both parties. Sure I am, that, for the interests of those who combine commercial operations with rights in the land, any settlement in any degree equitable would be far more advantageous than a continued state of hostility on the part of the ryots.

The 1st June 1864. G. CAMPBELL.

Minute by the Honourable Mr. Justice W. S. Seton-Karr.

Minute by the Honourable Mr. Justice Seton-Karr, dated the 2nd June 1864.

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I HAVE devoted, to the proposed changes in Act X of 1859, that amount of serious interest and care to which the subject is entitled, both on account of the ability with which the learned Chief Justice has expounded his views, and the important and diversified interests which the Law itself embraces.

Act X of 1859.

2. I have carefully studied the old Laws of 1793, the past decisions of the late Sudder Court, the animated debates which took place in the late Legislative Council in 1857 and 1859 previous to the passing of Act X, and the elaborate and ample judgments of the Chief Justice in the late now celebrated case of Ishur Ghose *versus* Mr. J. Hills. I have also again referred to the Report of the Indigo Commission of 1860, which contains a vast mass of valuable evidence, *all taken on oath*, relative to the interests of divers classes in the land, and to the habits and feelings of the people. And I have even thought it advisable to refer to several pamphlets and articles in newspapers and periodicals written on both sides of what is now familiarly known as the great Rent question.

3. Before proceeding to consider the expediency of the alterations recommended by the Chief Justice, I think it absolutely necessary, in as brief a compass as possible, to review the actual relations existing between zemindar and ryot as they are either defined by law and by judgments of the Courts, or upheld by that common law and custom, which is the foundation of most good laws, and which is stronger than any Code.

4. Here, at the outset, I quote the words used by Mr. Justice Sumbhoonath in his decision of 17th March 1864, in which judgment he concurred with the Chief Justice in rejecting the review in the case alluded to:—

"We may further allow that all such ryots in this country have been, according to custom, allowed a share of the profits of the lands cultivated by them beyond the bare wages of a hired labourer, and that zemindars, notwithstanding the decennial settlement, have not, by law

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or custom, that complete right over the lands and tenants which parties called proprietors enjoy in other countries."

5. The above sentence I hold to be pregnant with a very vital and important truth. It can never be too often quoted, whenever the rights and powers of the zemindar over the ryot are being discussed. These words are, I believe, in entire accordance with the experience of the most practised officials in the country, present and past, with the avowed intentions of the Legislature, with the course of the earlier decisions of the highest Courts of the Company, and with the habits, the rights, and the recognised position of the agricultural population of Bengal.

6. But, I have observed lately in discussions on this subject, expressions and theories which would altogether over-rule and ignore this sound view of the relative position of zemindar and ryot, and which would substitute, instead, a theory of absolute, unqualified, and entire property in the soil on the part of the zemindar, such as, if it could be carried out in practice, would reduce a large proportion of our agricultural population to the condition of mere hired labourers or actual tenants-at-will, without any interest or rights in the soil whatever.

7. The words of Mr. Harington in his Analysis, Vol. III, page 398, are also well worthy of deep attention on this part of the subject.

8. After quoting Mr. Shore's opinion to the same effect, he says—"It is by attempting to assimilate the complicated system which we found in this country with the simple principles of landlord and tenant in our *own*, and especially in applying to the Indian system, terms of appropriate and familiar signification which do not, without considerable limitation, belong to it, that much, if not all, of the perplexity ascribed to the subject has arisen. If, by the terms proprietor of land and actual proprietor of the soil, be meant a landholder possessing the full rights of an English landlord or freeholder in fee simple, with equal liberty to dispose of all the lands forming part of his estate as he may think most for his own advantage: to oust his tenants, whether for life or for a term of years, on the termination of their respective leaseholds, and to advance their rents on the expiration of leases at his discretion; such a designation, it may be admitted, is not strictly and correctly applicable to a Bengal zemindar, who does not possess so unlimited a power over the khood-kasht ryots *and other descriptions of under-tenants*, possessing, as well as himself, certain rights and interests in the lands which constitute his zemindary." Mr. George Campbell, in his *Modern India*, has written much to the same effect as Harington or Shore.

9. In the spirit of the above observations, I should hesitate to apply to such classes the maxims of pure English Law and of English Political Economy as at present enforced in England.

The relations between landlord and tenants in England are, for the most part, sharply and well defined. The rights of either parties are either secured by law, or are based on express contracts; and disputes between the proprietor of an estate in any English county, and the tenant of any one of his farms, rarely come within the cognizance of the Civil Courts. In fact, in place of the law of landlord and tenant as it was in force in the old feudal times, we have now, in England, a system of pure mercantile law; and a landowner has, all over England, with a few local exceptions, an absolute right in his soil or land, and can deal with the same, *quoad* the tenant, as he would with personal property.

10. In India, on the other hand, the rights of different parties in the same real property often do and can co-exist. There may be uncertainty as to the exact point where one right terminates and the other begins. Considerable time and research are often necessary in order to separate, adjust, or define the same: but real injustice, tending eventually to political discontent and danger, may be committed if we attempt to adjust and simplify the relations of both parties in real property, on principles not familiar to Orientals, at variance with their habits and usages, or opposed to their cherished convictions, their wide-spread theories, and their long-standing rights.

11. The following, I believe, to be a correct view of the various and conflicting rights and privileges of both zemindar and ryot in the land in Bengal. It is taken from a study of the decisions of the Courts, of printed and unprinted

official papers, and is grounded also on such practical observations as I have been enabled to make from not unfrequent intercourse with the mass of the agricultural population.

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12. That the language of the Regulations of 1793, as to the rights then conferred on the zemindars, is precise, clear, and even unqualified; that they were then declared "actual proprietors" of their lands; that the "property in the soil was declared to be vested in them," may be readily admitted. But it is equally certain that, both by custom and statute law, and by the written decisions and the practice of Courts of Justice from 1793 downwards, this actual proprietorship, so vested in the zemindars, has never been exercised, or treated as capable of exercise, in the unqualified sense with which proprietorship is exercised in England. The rights conferred by the Legislature in 1793 were rights of a certain proprietorship, but were not incompatible with the vested rights of others, whether of occupancy or something much higher. The zemindars were declared permanent proprietors of such rights, as they had had before temporarily exercised in conformity to general custom, and as Government had in its power to confer on them. But they were never declared proprietors of every acre within their zemindary to the absolute annihilation of all subordinate rights. Even in the Regulations of 1793, there is a constant and a marked distinction drawn between ryottee (tenant) and *nij-jote* and *khamar* lands, or lands held by the zemindar as a sort of home farm, and cultivated by his own servants or by hired labour. And, though this distinction may to some appear unpalatable, I believe conscientiously that it rests on the most clear and irrefragable evidence. It is the very idea expressed by Mr. Justice Shumboonath in the words quoted at the commencement of this Minute. It is judicially recognized by the bare and simple fact that, to enhance the rent of his ryot, the zemindar is compelled, by law, to have recourse to the Civil Court; and this bare necessity of the institution of a civil action, in order to enhance the rents of a tenant, is to my mind, a convincing proof that any theory of absolute and unlimited proprietorship, as conferred by the laws of the perpetual settlement, is a theory wholly at variance with the established custom, and with the powers which zemindars enjoy by virtue of the law.

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Regulations I, II, and VIII of 1793.

13. What, then, are the rights of the zemindar and the ryot respectively in the lands included in the limits of the perpetual settlement, as far as they can be ascertained?

14. The zemindar, at first sight, appears certainly possessed of very high privileges and powers. He is at liberty to impose rents on every beegah of land included in the area on which the revenue, for which he is responsible, is assessed. He can, *proprio motu*, and without having recourse to an action at law, dispossess all persons who set up rent-free grants of a date subsequent to December 1790. The lands of all ryots who die without heirs, or who abscond, revert to him. He has the undoubted privilege of levying and assessing rents at a higher rate on the better qualities of lands, and on some of the more valuable kinds of produce. His title to demand rents from tenants, who are mere occupiers without any title, is, it has been judicially held, barred by no length of time, not even by sixty years' abstinence of demand, inasmuch as the mere liability for rent is held to be a constantly recurring cause of action. As regards his distinct proprietary rights in some of the very products of the land, there is, in all the ordinary pottahs which the zemindar issues to ryots, an invariable restriction against the cutting of trees by the ryot, which might even seem to imply that the right to the timber and fruit trees belongs not to the ryot, but to the zemindar. Tanks are not usually dug, nor are new roads cut, without his permission; and the latter are sometimes actually excavated at his expense. This is one of the few instances in which I have known zemindars lay out any money on the land. The motive, however, is generally a pious one. The theory that the rent-bearing area of the estate is not to be reduced without *his* permission is, in this and other instances, namely, in the excavation of tanks and the formation of roads, openly recognised. The zemindar's right to rents includes not only rents from agricultural produce, leviable in kind or in money, but rents from fisheries in running streams and in marshes, from the actual produce of the forest, and from the very droppings of the trees. In some districts certain tenures are held not to be transferable without his consent,

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though this part of the subject remains surrounded with much doubt and uncertainty, while the new tenant is subjected to a small fee for the entry of his name in the rent-roll of the zemindar.

15. On the other hand, it is quite certain that no practical interference whatever with the rotation of crops by the cultivator is ever attempted to be exercised by the zemindar. He never directs the cultivator to sow early rice in one year, and hemp in the next, or to make the cold weather crops, alternately, mustard seed and barley. In fact he never troubles himself, for a moment, with any such matters. The Bengal ryot, though restricted by the peculiarities of climate to the use of one single crop over a large portion of the country, cultivates his higher lands with tobacco, sugar-cane, or with oil seeds, with indigo for seed, with vetches, with oats, with barley, or turns the same into a series of date gardens, at his own expense, and at his own choice and pleasure. No contribution is ever made by the zemindar towards the erection of ryots' houses. The law that fixtures become the property of the zemindar, is, in Bengal, absolutely unknown, *even in theory*; and a ryot changing his residence, or leaving one estate for another, constantly carries away with him the fixtures of his house, or of his cluster of houses, which he has himself erected and repaired by his own labour, or at his own expense. Although the language of the pottahs prevents the ryot from cutting trees without permission, yet this restriction does not certainly extend to timber or fruit trees grown by the ryot himself or by his forefathers, and, practically, in scores of instances, I have seen valuable trees cut by ryots for firewood or sale, without any reference to the zemindar or any regard to his wishes, and, sometimes, without the payment of the traditional fee to which the zemindar is considered entitled when timber or fruit trees are cut down. That ryottee tenures of all sorts are constantly attached in execution of decrees of the Revenue and Judicial Courts, that such holdings, whether of tenants with absolute and hereditary rights, or of tenants with mere rights of occupancy,* are put up to sale by scores and hundreds, all over the country, is a fact that admits of no question whatever. It is equally certain that they have a positive marketable value, and often change hands by private transfer, sometimes, with the consent of the zemindar, and sometimes *in spite of all his opposition*. If a zemindar himself wishes to establish a hât, to build a temple, to erect a serai, to enclose a garden or pleasure-ground, and has not either a piece of vacant ryottee lands or of khamar or nij-jote land at his disposal for this object, he is *forced* to treat with a tenant even on his own estate, and to take a pottah from him. I do not believe that it ever entered into any zemindar's head to think that he could occupy land for such a purpose without recourse, previously, to such a formality. Scores of zemindars all over the country hold hundreds of ryottee and subordinate tenures in this way in their own estates, as well as in the estates of their rivals and opponents, and while holding such tenures are possessed of the status of, and are subject to all the conditions imposed on, a ryot. Leases for limited periods between zemindar and ryot, for a distinct series of years, though common in parts of Behar for instance, are in other parts of the country somewhat unfamiliar to the peasantry; though ryots and under-tenants are in the habit of giving out their own rights to others of the same rank and position as themselves on leases for limited terms. Between many zemindars and ryots there has been no interchange of pottahs and kabuliuts at all. The ryot may be found holding on, as his father did before him, under an implied contract that he would not be turned out so long as he paid his rent. When there has been such interchange, the ordinary form of pottah specifies no term of years whatever, unless it be where the rent is declared not liable to enhancement, and where the tenure is granted in perpetuity to be held from father to son. It is certain, too, that in the earlier decisions of the late Sudder Court, or until the last few years, a lease so awarded was held terminable only by the consent of both parties, and not at the option of one or the other. And it is equally undeniable that, in the general belief of the united peasantry, all cultivators, except the merest tenants for a year or two, are believed to have a right to remain on their lands so long as they pay their rents, and are not liable to dispossession.

* See List of Tenures *Koorfa* or *Chikmi* sold in six districts, Appendix to Indigo Commission, No. V, and answers in the evidence of the same Report, Nos. 1540, 1546 to 1552, 2602 to 2604, 2941, and 2942.

16. Bearing these things in mind, as they seem to me essential to a right comprehension of the subject, I now come to the specific proposals of the Chief Justice made in his Minute of the 31st of March 1864, which amount to the repeal of sections 6, 17, 18, 19 and 76 of the Act, and to certain other minor changes, all calculated to modify Act X of 1859.

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17. I do not gather that the Chief Justice holds the doctrine that the Government was positively debarred by the terms of the Perpetual Settlement from making new laws in favour of the ryots, or that it cannot now supply the deficiencies which, it is universally admitted, occurred in the great and statesmanlike measure of Lord Cornwallis. But I gather that his main-ground of change is, that section 6 interferes with the just rights of the zemindars by vesting rights of occupancy in ryots, which rights had no existence previous to the Act. This theory, however, appears to me quite erroneous, and at variance with the history of tenant rights and the common law of the country as known to those who have studied these subjects.

18. Now, it must be observed here, that during the debates which took place previous to the enactment of Act X no such objection was ever urged for a moment against the measure. Section 6 was passed without a single word of dissent either from the learned Chief Justice, who was then a member of the Supreme Government, and who took a lively interest in this and other questions, or from any other of the able and well-informed men to whose united exertions the measure is due. The power of the Government to legislate for the ryot, to place him in that position which it was expected he would have attained by the consent and aid of the zemindar, to secure his rights from encroachment or annihilation, and to give the permanent guarantee of statute law to a condition till then held by custom or sufferance, was not seriously questioned. The only grave objections that were made by the Chief Justice related to the stamp duties, and to the jurisdiction by which the suits under the Act were cognizable.

19. I would refer on this point to the debates of the said Council for the years 1857 and 1859, especially on the 2nd and 3rd readings of the Bill, pages 436 to 444, and 470 to 481, of the volume for 1857; and pages 219 to 258, and 270 to 285, of the volume for 1859. All these I have carefully considered.

20. I can, however, fully conceive that the additional experience since acquired by the Chief Justice, and the great time and labour which he has devoted to this enactment, may have modified and changed his views, and I admit that those views are entitled to great respect.

21. But I must remark that the opening speech of Mr. Currie, on the first reading, did very prominently bring this opinion forward, and did directly challenge an expression of opposite views; while the opinion of Mr. Grote, and especially that of Mr. Reily, given in answers 1551, 1558, 2593 and 2594 of the evidence taken by the Indigo Commission, is, that the law in question only supplements and completes the laws of 1793, and originates no radical change in the actual tenure of property. Both these gentlemen are distinguished by the highest experience of revenue matters.

22. The belief that a certain period of occupancy created a right to remain on the land, that ryots, even with no other rights whatever, could not and would not be ejected so long as they paid their rents, is general all over the country. In the North-Western Provinces it had the sanction of the most experienced revenue officers, and the recognition of those Courts of Revenue whose word, in these matters, was then law. That the same belief, and some of the same results, prevailed in Bengal I have no doubt whatever, though the subject was less obtruded on the public, because it had been our practice not to interfere with the relations between ryots and zemindars, trusting, as we did, to the vain hope that, without legal compulsion, the zemindars would carry out the intentions of Lord Cornwallis.

23. Opposition to section 6 of this law may, however, be supported on other grounds than those of incompatibility with this guarantee of 1793 given to the landholders, and especially on the second ground taken by the Chief Justice, *viz.*, that it is not expedient to give encouragement to the spread of small holdings. But that the law, as passed, did only give a legal sanction to what rested on the belief of the best revenue authorities, on the lawful expectations

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of the cultivators, and on the acquiescence of the zemindars, I have no sort of doubt.

24. It was, I hold, because the belief in growing rights of occupancy was general, because occupying and cultivating ryots had not been sufficiently protected, and because 12 years is the period which generally gives validity or creates a prescription in cases of civil actions for other rights, that this period was taken for section 6. In taking up this ground, the Legislature were, doubtless, actuated by other and important considerations, arising out of the various political and social features of the country and people; by the well-grounded belief that zemindars ordinarily do not wish to eject ryots; by the knowledge of the invincible attachment which ryots have to their native villages, which they do not quit, except when oppression becomes literally unbearable; by the existence of an implied contract between zemindar and ryot to the effect that, as the ryot will not be summarily ejected on the one hand, so, on the other, he must expect to be assessed at the pergunnah, not the market, rates except he can plead a title to hold at a fixed and unalterable rent; and by the obvious feudal relations which these parties bear to each other, and which find no parallel in the present position of landlord and tenant in England.

25. In fact, the Legislature passed a deliberate Act, which was considered a fulfilment of the pledge of the Government to the agriculturists given in 1793, and in harmony with the declared policy of the State towards a large class of subjects, whose rights and customs deserved to be weighed and measured, not by the English standard, but by the immemorial customs of Asiatics;—customs which neither neglect nor convulsion, nor oppression, could obliterate, and which had remained proof alike against the new system of revenue management introduced by Mussulman conquerors, against the confusion caused by the fall of those dynasties, against the raids of the Mahrattas, and against even the unfortunate practical omissions in the celebrated Code of 1793.

26. The State, doubtless, considered, that, excepting a few tanks dug, a few roads opened, and here or there a new hât or gunj established, after a series of disturbances by which the population had been half demoralised, the zemindars, it was notorious, had done absolutely nothing worthy of their position and name. No new products have been introduced by any native zemindars. Improvements in agriculture have not proceeded from them. Under their apathy the breed of cattle has, to a certain extent, degenerated.

27. On the other hand, considerable tracts of jungle have been cleared wholly at the expense, or by the labour, of the ryots; and some of the higher kinds of cultivation, as for instance, those of the date-tree, of the sugarcane, and of tobacco, are entirely due to the capital and the exertions of substantial ryots and jotedars; no zemindar has to this end, as far as I have been able to ascertain, contributed one farthing, or even given to the population below him the benefit of his example.

28. Then, as regards the proposal to abolish section 6. I cannot disguise my opinion that it is, practically, already abolished by the decision of the Chief Justice. Whoever reads that judgment carefully must, I think, arrive at the conclusion that, whatever safe-guard was intended to be conveyed, and whatever rights to be assured to the ryot by that section, they have been annihilated by a decision which rules that a cultivator, holding under that section, though he may have occupied the land for 30 years and more, is bound to pay an amount of rent not regulated by the pergunnah rates, but such as the zemindar may obtain from any new tenant. Practically, then, there is no limit to the power of a zemindar to enhance; and ryots, with holdings of 30, 40 and even 50 years, must either submit to what the zemindar demands, or must incur the expense of a lawsuit in which, even if successful, they are sure to be ruined, or must quit their homesteads.

29. It is no secret that this decision is popularly discussed and considered as having rendered any change in Act X wholly unnecessary, even in the opinions of persons, zemindars and others, who, before it was delivered, most wished for a change; and I firmly believe that no judgment fraught with such consequences, or likely to affect the interests of so numerous a class, has been passed in India within the memory of men living, or is even to be discovered in the forensic annals of England. Even grant, then, that the paramount

necessity for changing Act X, were admitted on all hands, as the one thing desirable for Bengal, it still seems to me that any alteration as regards section 6 would be wholly superfluous.

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30. As long as zemindars are to be guided in their demands, ryots in their refusals or compliances, and Courts in their conclusions, by the principles of that elaborate decision, the section is as much a dead letter as if it had never passed the Council.

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31. Consequently, I venture to argue that, even on the learned Chief Justice's own showing, recourse to legislation, in order to repeal this section, would be inexpedient and unnecessary.

32. I think it, moreover, a great mistake to suppose that, had section 6 not been passed, the contending parties would have made their own arrangements, and have to come to terms, without having recourse to law.

33. Ryots in Bengal may be fairly divided into three grand divisions or classes:—

1st—Ryots with *mourusi, mookurrari*, or *istimrari* leases, whose rents are fixed permanently, and cannot be enhanced.

2nd—Jotedars and ryots possessing jotes or jummas, without fixed rents but having certain rights of occupancy and liable to pay at the pergunnah rates.

3rd—Ryots, without any such rights, being either tenants-at-will or yearly tenants, or tenants with terminable leases.

It is obvious that ryots of the 2nd class are those whom such a law as Act X is most likely to affect at any time. The zemindar has it always in his power to institute a suit to raise the rents of such ryots, and the greater frequency of such suits of late is owing partly to other well-known disturbing agencies, such as the indigo disputes; and partly to that remarkable peculiarity of native social character, which derives from a new law of any kind a vigorous and fresh impetus for litigation.

34. But I think there is force in the Chief Justice's able argument that had section 6 not passed, then, in the natural and inevitable litigation for rent, section 5, which relates to ryots, with rights of occupancy, who are thereby declared entitled to pottahs at fair and equitable rates, would have extended only to cases in which those rights existed according to the old law and could be proved.

35. Then the large class of ryots whom I have described as the 2nd class, and who, it is well known, existed before Act X was passed, would have been left to be sued in the usual manner by the zemindar who wished to raise rents, and would, in all probability, not have had their rents raised beyond the pergunnah rates.

36. As it is, landlords, seeing that twelve years' occupancy after Act X of 1859 will bar their power to eject, or to determine a tenancy, have brought the ryots into Court, and the effect of such litigation appears to be that all cultivators without fixed and unalterable rights such as those described in class I, are, if the Chief Justice's ruling be correct, liable to be included in one category, and may be called upon to pay any rent which the zemindar chooses to impose as fair and equitable. I cannot, therefore, avoid the inference that, for such men, it would, perhaps, have been much better had section 6 never been enacted.

37. But I shall now independently discuss the question of the expediency of passing or repealing this section. This is a wholly distinct question from that of the authority of the Legislature to make such a law, or from the antiquity or the novelty of the rights which the law is said to have created. These questions I have already endeavoured to dispose of by showing that the Government are empowered to protect such rights, and that such rights did previously exist more or less defined.

38. The propriety of passing this section was considered, as far as experience then warranted, by the Indigo Commission, appointed in 1860, of which I had the honour to be President. At section 152 of our report we wrote:—

"Section 6 gives the ryot a right of occupancy after twelve years, and prevents those violent ejectments so often made at the caprice of the landholder. With some diffidence, we

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venture to suggest that this particular section may be too favourable to mere squatters, and not so much protecting rights as creating encumbrances, may operate to the prejudice of the zemindar. This, however, will hardly happen, if the zemindar gives a fair share of attention to the management of his property."

39. At that time it was thought, in some quarters, that the provisions of section 6 would be principally applicable to new tenants, or to tenants who had been only very few years on the lands; that this provision of the law was intended to incite zemindars to look after their estates, to make them keep an eye on the gradual increase of the population, and to lead them to come to terms with new ryots, before the latter, by residing for twelve years, had acquired rights of permanent occupancy. I imagined also, with many others, that if such ryots did reside more than twelve years without coming to any specific engagement with the zemindar, either by their own good fortune, or by his neglect and sufferance, they would be entitled to pottahs at fair and equitable rates, and that those rates would be the rates previously paid by the ryots, their near neighbours; or that, at any rate, they would be only liable to enhancement on one or other of the conditions annexed to section 17. I was not then aware that, in the judicial application of the law, a principle, which I do not find laid down in an enactment which does attempt to lay down such principles as far as legislation can do so, would be introduced; and that the ryot who had resided twelve years would be practically compelled to pay just what any ryot who had *not* resided twelve years might offer or might be held to have offered. The whole distinction between ryots with rights of occupancy and ryots with no such rights has been judicially abolished, and they are both to be treated by the landlord as in one and the same category. This, in my humble opinion, seems to me rather more than an explanation of the law. It is a positive change by the introduction of a new principle. At least, as I read the ruling, ryots who are admitted to have rights of occupancy, are to be required to pay any rent which new ryots, who have *not rights of occupancy*, might offer to pay: And where, it may well be asked, is any difference left between the two?

40. Now the mass of ryots who have not held from before the Permanent Settlement, or who cannot prove by irrefragable evidence that they have so held, who are neither mokurraridars, nor even khood-khast ryots with rights dating from 1793, must be very considerable. There must, I say, be a very large class of respectable and substantial jotedars, resident on their own homesteads, and cultivating lands on the plain at no great distance therefrom, who have now held for two generations, but who have either held without pottahs, or with pottahs in which neither the term of years is fixed, nor are the rents declared unalterable, and who may, therefore, be, any day, liable to enhancement, but whose rights it must, I should think, be the object of the British Government to protect and affirm. I am not aware that the Permanent Settlement in any way altered the *common law of the country as to ryotee tenure in land*, or that there are good grounds, legal or political, for placing ryots whose tenures date, say since 1800, or who cannot show positively that their forefathers held their lands before 1793, in a much more disadvantageous position than others who are fortunate enough to be acknowledged as the lineal descendants of those concerning whom Shore and Hastings wrote copious minutes.

41. I am not aware that the Government wishes to see this large class of men, from whose passive acquiescence in our rule we have, in unquiet times, derived so many advantages, and many of whom, in peace, rise into that substantial middle class without which communities have neither strength nor vitality, converted into downright haters of the class above them; and, by a natural consequence, of the ruling power by which that class has been unduly exalted. I think that, on every possible ground, it is desirable that, in Asiatic countries, we should look to the agricultural population for countenance and support, and I hold that theories which would tend to make the Bengal ryot a mere recipient of wages, and which would expose him to the chances of ejectment, and competition, and change, on the plea of "giving free play to capital," to be mischievous and very ill-suited to the state of the country. Indications are now not wanting that the condition of the peasantry of England, divorced from all rights in the soil under the system of mercantile law which has been,

during a long series of years, gradually introduced and applied a real property, is thought to be one of those points, in our otherwise admirable social system, on which the mind cannot rest with unalloyed satisfaction. It is even becoming to statesmen a source of considerable reflection and of anxiety. I would refer on this head to a remarkable article in *Fraser's Magazine* for March 1864, which, though it may seem to some to follow too much the doctrines of Messrs. Cobden and Bright as to landed property, does prove incontestibly that we, in England, have already gone far enough, if not too far, in this direction,—by severing the connection of the peasantry with the soil, which works so well in Belgium and in our own Channel Islands; that we have impoverished our rural population, and have practically declared the peasant unable either to buy a competence for his old age, or to rise one single step in the social scale. It is true that, under the good feeling which is maintained in England between the various classes of society, it will be a long time before honest labourers, at 10 shillings a week, become part of the dangerous classes, or hold out any temptations to ministers of sedition and revolution. But things are very different in the East, and the prospect of a rural population, rack-rented, divorced from the soil and its profits, and with feelings exasperated by the loss of their rights, is one which, however distant, I cannot contemplate without dismay and alarm. Yet it is to this goal that modern theories, openly avowed and discussed, are infallibly tending.

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42. On this head, and as against this doctrine, I would quote the opinion of the late Chief Justice of the Supreme Court, the learned Sir Lawrence Peel, given at page 139 of *Fulton's Reports*:—"The ryot has here a better tenure than a lessee in England, and one not merely so precarious as a tenant-at-will." (Thakoe *versus* The Sheriff.) The Chief Justice evidently held that, though the talookdar had a certain interest in the property, the ryot had an hereditary interest independent of both talookdar and Government, neither of whom could displace him as long as he paid his rent; and the case is curious as showing that the talookdar was, by the Supreme Court, held *not* in possession of certain dwelling-houses and lands, and could not sue on an action for *trespass* thereon, though he might have his remedy by an action *on the case*. The ryots were very properly held to be the parties legally in *possession of the houses and lands*.

43. It may, perhaps, appear to the Government of India inexpedient for the Legislature, at this juncture, to step in and apply remedial measures; should the Government be of opinion that the law of Act X interpreted by the Chief Justice, is not interpreted in the spirit in which it was enacted. Government may, perhaps, think it desirable to wait and see whether persons interested will resort, for their alleged rights, to the highest tribunal in England, or whether some other contingency may not arise. Government, I say, may feel that it ought to leave the great question at issue to be settled, if possible, by the Courts by which it has been hitherto treated; and that it ought only to step in when all hope of a settlement by judicial action, with satisfaction and fairness to both landlord and tenant, appears at an end.

44. But should Government not be influenced by any such considerations, or should it hold that the obviously unsettled, discontented, and excitable ryots of Nuddea and Jessore, not to speak of other districts, require immediate legislative protection, then the changes which I would respectfully and earnestly recommend in the law, and as to which Government, in its letter of the 12th of October last, asks for our opinion, are as follow; and, for my own part, I think it right to declare my opinion that the sooner the Legislature interposes to protect the ryot the better for all parties.

45. Section 6 should not be abolished, but should be re-enacted, and be read with section 5; and it should be held applicable to all ryots who have held rights of occupancy for twelve years; and it should be expressly enacted that such ryots are entitled to claim the benefit of the provisions of section 4, whereby any proof that a ryot has held at the same rent for 20 years shall be presumption that the land has been held at this rate since the Permanent Settlement, until the contrary be proved. I would further enact that such ryots should be liable to have their rent enhanced only under the provisions of section 17. And I would distinctly lay it down by law that the ryot was entitled to a distinct proportion of the profits, as well as to a return

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for the outlay of his capital and stock on the land. Indeed, I would not shrink from trying to define what proportion of the increased value of the land should go to the zemindar, and what to the ryot; nor do I see any reason why a limit should not be put to the power of the zemindar to raise his rents 200 per cent. in one year. It is all very well to say that the ryot, who has held at four annas per beegah for a long series of years, may consider himself fortunate in having been permitted to hold on at inadequate rents, and that the zemindar is only taking advantage of the law. No powers of reason or logic, and no arguments drawn from the law of the thing, will ever persuade a ryot whose rents are suddenly raised from four to twelve annas or to one rupee per beegah that he has not been cruelly wronged, and the sense of ill-usage and injustice will rankle permanently in him.

46. This would give security and confidence to a large, valuable, and old-standing class of the agricultural population, whom it is, on every account, political, commercial, social, and moral, most desirable to preserve in their homesteads and villages; and to save from exposure to ruinous rack-rent and competition. Lands which are thrown up by other ryots, or which became vacant by death or desertion would, of course, still revert to the zemindar. If the zemindar paid due attention to his affairs, he would see that fresh tenants entered into proper engagements with him for such lands. If he neglected his interests, such ryots and their heirs would acquire a permanent right of occupancy, could not be ejected, and should be dealt with under the sections alluded to, *read together*.

47. By this we should avoid the political danger of unsettling the agricultural population, who have already tangible and long-standing rights in the lands, though such rights may not be now defined with precision; and, on the other hand, we should not deprive zemindars and putneedars of the advantages which they may reasonably expect to derive from vacancies on their estates, provided they pay a reasonable attention to their duties and their interests. My opinion is based here on two main considerations:—The zemindars have done little or nothing for the country, with some remarkable but isolated exceptions; the ryots have done everything; and to the claims of capital, however great and worthy of respect, the social well-being and the political contentment of the middle and lower classes are not to be postponed. Of course, the views which I advocate, are applicable only to districts permanently settled. In districts not permanently settled, and on the frontier, or in waste lands, Government can, on every political and commercial ground, sell, to Europeans or Native capitalists, the lands in fee simple.

48. I am wholly unable to concur with the learned Chief Justice in the propriety of repealing section 17. It is the safe-guard of all that the ryot most values. No difficulty has been experienced in working clauses 1 and 3 of this section, and the difficulties of settling clause 2 will gradually become less. The grounds assigned by the Chief Justice for his recommendation are stated in pages 6 and 7 of his Minute. But if a zemindar has a large tract of uncultivated or waste land which he wishes to be cleared by the agency of ryots, he can easily introduce ryots thereon and make them agree to a *Russudi* or progressive settlement, the nature of which is familiar to every one. If the ryots have all the exposure, risk, expense, and labour of clearing this tract, as it is well known they do have, it is but fair that they should reap some of the solid advantages of their expenditure of time and labour. I would here, too, quote the opinion of Mr. R. Morrell, a gentleman possessed of capital, intelligence, and experience, who stated to the Indigo Commission that he found it advantageous to grant leases in perpetuity at fixed rents, for the clearance of such jungle lands, or even for lands which he had himself cleared; and that, in this way, his grants had notably prospered in the Sunderbunds.

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49. Neither do I see any reason for repealing section 18 which permits the ryot to claim an abatement of rent. It is the converse of section 17, which allows the zemindar to sue for enhancement. The only reason given for its abolition, as I read the Chief Justice's Minute, is that the section lays down, as fixed law, what is merely matter of evidence. But as long as either Civil or Revenue Courts are the tribunals by which these matters are cognizable, I do not see that this can be avoided. I do not assume that any one is

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desirous that the action of the courts, be they Civil or Revenue, should, at present, altogether be barred.

50. It follows, too, that I can, in no wise, agree in the proposal to abolish section 76, which, in a suit for the delivery of a pottah, empowers the Collector to fix the time of the pottah, if the parties cannot agree about it. The section appears to me quite in keeping with the scope and object of the law. Indeed, the changes advocated by the Chief Justice would go far to counteract the very objects which the framers of the law hoped to attain.

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51. As regards the recommendation to encourage landlords to grant leases for a term of years, I conceive that neither Government nor its officials need take any action whatever in the matter. Zemindars may be left to look after their own interests; and if they find vacant lands, they can let them on any terms which they can command. But as the wish of the zemindar is generally to keep his ryots, and as the ryot becomes attached to his homestead, I cannot think that this practice will ever become universal, or that it is necessary to encourage it. Of course, lands are now constantly taken and thrown up by ryots, after a year or a term of years, where such lands do not form part of the homestead or of the original *jumma*; and we may fairly leave this practice to find its own level.

52. I entirely concur with the learned Chief Justice in thinking that, under section 19, the notice of relinquishment of land should be given, not in the last month of the Bengalee year, but six months before the expiration of the current year, and the same principle and period should be extended to notices of enhancement given by the zemindar under section 13.

53. I would also enact that, after one decree for enhancement had been given by any court, no second suit for enhancement could again lie for a period of ten years from the date of decree.

54. This is no new principle. It is introduced into Act IX of 1847 in regard to the survey and re-assessment, by the Government, of lands on the banks of rivers, and on the shores of the sea. And as it would tend, practically, to ensure peace and prosperity, instead of litigation, useless expenditure, and ruin to cultivators, I should prefer to see the Legislature act on such a principle; a dozen arguments based on the right of landholders to do as they like with their rents and lands, and on the freedom of action necessary to the development of national resources, notwithstanding.

55. It has often occurred to me that similar questions to these, which have been so much discussed in Bengal Proper, ought to arise, and may have arisen, in the province of Benares, in which the permanent settlement has been introduced. I have heard men of experience in revenue matters in the North-Western Provinces declare that, in that province, the rights and privileges of the ryots have been settled, since 1795, by the agency of officials, after the guarantee to the zemindars of the permanency of their assessment, and without producing confusion or disputes. How this may be I know not; but it will be, of course, in the power of Government to ascertain exactly what has been done in this direction, with what result, and with what promise of efficacy if applied to other districts and tracts of country?

56. It is, I conceive, also open to the Government to direct that a regular settlement and adjustment of all rights, tenures, and privileges held by any persons in the land, should be made throughout Bengal under Regulation VII of 1822, as suggested by Mr. H. Ricketts, a late Member of the Supreme Council, and, for many years, a most valuable Member of the Board of Revenue.

57. It may be conceded that this measure, if applied throughout Bengal, would cause very considerable expense, and would again stir up ill-feeling and contention between zemindars and ryots. But that such a measure would, in the end, produce that order and quiet which must follow on the ascertainment and definition of rights and tenures, I have no doubt; and I question whether any state of things could be much worse than chronic antagonism between such parties with a resort to civil tribunals, which, however expert and laborious be their presiding Judges, are scarcely qualified to decide hundreds of suits in which such matters as the profits of stock, the wages of labour, the interest on capital, and the due proportions of rents, form the staple of discussion.

58. I have to apologise for the length of this Minute, but the extreme importance of the subject renders it almost impossible to compress my remarks

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into a shorter space. Even as it is, many topics have been wholly passed over, or but partially treated.

59. I would sum up my recommendations as follows:—

1st.—Government should at once interfere, if it holds that the future prosperity and contentment of the agriculturists cannot be secured without legislative and executive interference.

2nd.—If Government decide on interference the changes in Act X should be as follows:

3rd.—All residents, chupperbund, or khoodkhast ryots and jotedars of 12 years' standing, who are neither mookurraridars, nor khoodkhast from 1793, to be protected by having their rights declared adjudicable only under sections 4, 5, 6 and 17, with certain amendments defining the proportion of the profits to which the zemindar and the ryot are entitled respectively, and restraining the zemindar from raising his rent more than cent. per cent. at one time.

4th.—Section 17 on no account to be abolished.

5th.—No second suit for enhancement to lie until ten years from the date of the *last* decree.

6th.—A change to be introduced into sections 13 and 19 by substituting a six months' notice for the notice in *Chaitro*, or the last month of the Bengalee year.

60. In making these remarks and suggestions, I have not failed to peruse carefully the reasons given by the late Lord Canning for giving his assent to a Bill, on which both assents and dissents had been recorded by the several members of the Legislative Council. They are worthy of deep attention, as the words of a lamented nobleman, whose unshaken constancy and firmness in a time of rebellion and peril, were not more commendable than his earnest advocacy of the welfare of the natives after the danger of rebellion had passed away. In his message to the Council, Lord Canning wrote—

"I believe that the Bill will confer a great practical benefit upon the agricultural population of Bengal.

"I find that the Bill is objected to, *not on account of the substantial alterations of the Law which it effects between landlord and tenant*, but because it gives the original jurisdiction, in cases arising between landlord and tenant, to the Courts of the Revenue Officers, and takes away original jurisdiction from the Regular Courts of Civil Judicature, and I find that this objection rests chiefly upon two grounds—

"*1st.*—That the number of Revenue officers whom it will be practicable to invest with powers under the Bill will be so small that parties and their witnesses will be compelled to travel greater distances to obtain justice than would be necessary if the Civil Courts were allowed to retain jurisdiction in such cases.

"*2nd*—That there is not a sufficient security that the Deputy Collectors will be qualified to try the suits in question.

"In regard to the first ground, it is by no means certain that the apprehension expressed will prove to be well founded; but were it otherwise, it would not, in my opinion, constitute a sufficient reason for throwing back, wholly and for an indefinite time, the operation of a measure, the substantial provisions of which will confer, in other respects, *a sensible benefit upon a vast community*.

"In regard to the second ground, I am satisfied that, as a class, Deputy Collectors are, by general education, by training, and by examination, quite as well qualified to try cases which arise between landlord and tenant, as the persons who, for the most part, preside over the lowest class of civil courts in Bengal.

"Lastly, I have to observe that no one doubts that it has long been desirable that the important questions connected with the relative rights of landlord and tenant, dealt with in this Bill, should be settled; that no objection is suggested to the nature of the settlement which the Bill contemplates; and that the Bill is a real and earnest endeavour to improve the position of the ryots of Bengal, and to open to them a prospect of freedom and independence which they have not hitherto enjoyed, by clearly defining their rights and by placing restrictions on the power of the zemindars, such as ought, long since, to have been provided.

"This being so, I think that the Bill ought to pass into law; and that defects of machinery or procedure, if any should be found to exist, should be left to be remedied hereafter by a supplementary enactment.

"For these reasons I have given my assent to the Bill, and I beg leave to add the expression of my opinion that the author of the measure, Mr. Currie, has established a lasting claim to the gratitude of the cultivators of the soil in Bengal, and to the acknowledgments of all who are interested in their well-being."

61. And I have further been guided by reference to the principles which, as I humbly conceive, should actuate those who make our laws, in dealing

with these remarkable rights; to the utter inapplicability of the pure English law of landlord and tenant, to the relations between zemindar and ryot; to the paramount necessity for securing, to the masses of the latter class, a permanent and an indissoluble connection with the soil, while we assure to the zemindar such freedom of action and such superior privileges as the feudal customs of centuries, and the universal practice of oriental societies has conceded to him; to the strongly-marked social characteristics of the peasantry of Bengal; to the serious political dangers which an entire disregard of their customs and their predilections will excite amongst a population obedient and docile, but liable to panic, excitement, and violent gusts of passion; to the flourishing condition of that country, which the labours of such a peasantry, in two generations, have changed from a wilderness into corn-fields, and in which they have, unaided, introduced many of the higher kinds of produce; to the perfect possibility of reconciling privilege with labour, property with industry, and each class in the strata of society with that immediately above it; and to the expediency of binding up the rights and interests of all classes of Her Majesty's subjects in a code which shall be equitable, consistent, and practical in its aims, which shall derive its chief strength from the unwritten law of the country, and which shall be neither too far in advance nor too much in the rear of its age.

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No 6.

P. S.—Since writing the above, I have had the advantage of perusing Mr. Justice Campbell's excellent minute on the same subject. I had not previously interchanged with him half a dozen words on the matter. I rejoice to find that, with local experience acquired in a totally different part of India from that with which I am familiar, he has arrived at the same conclusions regarding the paramount necessity for protecting the ryots of Bengal; and I have no doubt that some of the recommendations which he urges are well worth a trial.

The 2nd June 1864. W. S. SETON-KARR.

No. 1304, dated Simla, the 12th July 1864.

From—E. C. BAYLEY, Esq., *Secretary to the Government of India*, HOME DEPARTMENT,

To—*The Officiating Registrar of the High Court of Judicature at Fort William in Bengal.*

Letter from E. C. Bayley, Esq., Secretary to the Government of India, to the High Court, No 1304, dated the 12th July 1864.

No. 7.

I AM directed to acknowledge the receipt of your letter No. 1811, dated 7th ultimo, forwarding minutes recorded by Mr. Justice Seton-Karr and Mr. Justice Campbell regarding the provisions of Act X of 1859.

2. The Governor General in Council feels under obligation to the Honourable Judges who have thus favoured the Government with the expression of their sentiments on this important subject; but I am directed to say that His Excellency in Council feels some difficulty in dealing with a question of such magnitude on the foundation of opinions formed by Judges of the highest Court of the province without first taking steps to ascertain the opinion of the Court generally; and I am accordingly desired to request that you will move the Hon'ble the Officiating Chief Justice and the other Hon'ble Judges of the High Court to favour the Government of India, at their earliest convenience, with their sentiments on the working of the Act in question, and as to any amendments which in their opinion the law may require.

No. 1960, dated the 27th June 1864.

From—F. B. PEACOCK, Esq., *Officiating Registrar of the Calcutta High Court,*

To—*The Secretary to the Government of India,* HOME DEPARTMENT.

Letter from F. B. Peacock, Esq., Officiating Registrar, High Court, to the Home Department, No. 1960, dated the 27th June 1864.

Leg. Pros., January 1865, Nos. 7—20.

No. 7.

I AM directed to forward, for the purpose of being laid before His Excellency the Governor General of India in Council, the accompanying Minutes recorded by Messrs. Justices Steer and Levinge on the proposed amendment of Act X of 1859.

Minute by the HON'BLE C. STEER, *on Act X of 1859, dated the 18th June 1864.*

Minute by the Hon'ble Mr. Justice C. Steer, dated the 18th June 1864.

No. 8.

I COINCIDE with the Chief Justice, and on the grounds so forcibly put by him, in thinking that sections 6 and 17 should be repealed.

Minute by the Hon'ble Mr. Justice C. Steer, dated the 18th June 1864.

Leg. Pros., January 1865, Nos. 7—20.

No. 8.

The first section conferred rights on the ryots which they never had before. To take away those rights, after creating them, would, no doubt, be felt as a hardship by the tenantry generally. But landholders have been seriously injured by the creation of new rights in favour of the tenantry, and they have more cause to complain of the retention of the section than the tenants have of its repeal.

Besides, the operation of the section in the number of suits it has given rise to, and the great labour it has imposed, and will continue to impose, on the Courts of the country in deciding what is a fair and equitable rate of rent, is a serious objection to the section.

If section 6 is to be repealed, section 17 should go too,—and wherever it could be shown that the rent receivable by the landlord was not a fair rent, he should be allowed to raise it. Sections 3 and 4 protect ryots holding at fixed rates, and section 5 throws the burden of proving that existing rates are too low upon the landlord.

The decisions of the late Sudder Court and of the High Court will doubtless suggest some other points in which the Rent Act can be altered with advantage, and to these reference should be made when the question of the amendment of the Act comes before the Legislature.

Minute by the Hon'ble E. P. Levinge, *on Act X of 1859, dated 23rd June 1864.*

Minute by the Hon'ble Mr. Justice E. P. Levinge, dated the 23rd June 1864.

No. 9.

It is with much diffidence that I give my opinion on the important subject involved in the amendment of Act X of 1859, having only occupied a seat on the Bench of the High Court for 16 months, during a considerable portion of which I have been engaged on the Original Jurisdiction Side of the Court. In the earlier stages of my judicial duties I sat on the Appellate Side, and then I rarely had to consider any case coming under Act X of 1859, those appeals being almost exclusively referred to the Bench over which the Chief Justice presided, with the view, I believe, of establishing an uniformity of decision on this Act.

After a careful study of the Act, a slight practical experience of its working, and a perusal of the able Judgment and Minute of the Chief Justice, in my opinion an immediate amendment is required. The extent of that amendment, however, is the important matter to consider, as great interests, public and private, are at stake.

Act X, rightly or wrongly, has, by section 6, established a fixity of tenure in an occupying ryot who can show that he has cultivated or held land for a period of 12 years, and this has been declared to be the law in the provinces mentioned in the Act, since the 1st August 1859. It is a law declaratory of the then existing rights of the ryots in those provinces, consequently to alter that statutory title by the proposed repeal of the 6th section is a very responsible step. I think the section should never have been passed into law in its present shape, so I would amend it in the way I shall presently suggest. But a 12-years' cultivation or holding of land having now been declared to give a right of occupancy, I think it is open to great doubt whether it would be just to repeal that provision of the section.

A tenant-right in the soil seems to me to have been always recognised in the provinces mentioned in the Act, and it appears, therefore, to be reasonable and wise to fix a period for the establishment of that right. Twelve years have been selected, and for good reasons I conclude; and this period having now been acted on for five years, I think it would not be judicious to interfere with that provision of the section, but I think its too general applicability should be entailed. Section 7 has provided an escape to the landholder from the 1st of August 1859, should he wish to avoid giving the ryot, who has not been cultivating or holding for 12 years, an opportunity to claim a right of occupancy under section 6. Section 7 partially protects the landholder from the operation of section 6, where a lease or written contract exists, and may also be made applicable to a letting which has not run the full period of 12 years subsequent to the 1st of August 1859, by terminating the tenancy, and creating one under a written contract; therefore, I apprehend, no landholder can reasonably complain of the law as it stands on the ground of interference with his rights over the immediate ryot's holding conferred on such ryot within 12 years, or since the

passing of Act X of 1859, as he had in his power to prevent the accrual of a 12-years' occupancy by terminating the tenancy, and creating a holding under a written contract.

Minute by the Hon'ble Mr. Justice E. P. Levinge, dated the 23rd June 1864.

I am decidedly in favour of the system that will stimulate the introduction of written contracts in the dealings with land, and this is one of the advantages of the 7th section.

Leg. Pros., January 1865, Nos 7—20.

No. 9.

I conceive that the following observations warrant the statement that Act X requires an immediate amendment. The Chief Justice states at paragraph 5 of his Minute—

"Further, section 6 is general in its terms, and creates a right of occupancy as against a proprietor by a holding for 12 years under a farmer or dependent talukdar, or other person having only a temporary interest. The right of occupancy is given by section 6 without any reservation, &c."

The section is clearly open to the above construction, and perhaps it is the one expressive of the actual intention of the framers, although I confess it is altogether contrary to my notions of justice and, I believe, to the customs hitherto prevailing in this country. In my opinion all the acts and incumbrances done, created, or suffered by a farmer or immediate tenant, should terminate with his tenancy, and his ryot or the under-tenant's interest shall fall with his immediate landlords, although the sub-tenant had cultivated or held and therefore occupied for a period exceeding 12 years, and that such must be legally the result of the falling in of the immediate tenant's interest. But I could not say that such is now the case, having regard to the generality of the terms of the 6th section, and after the carefully-expressed opinion of the Chief Justice on the true construction of that section.

The 6th section, by the proviso, protects a ryot having a right of occupancy from having that right bound, or in any way interfered with by a cultivator who has occupied the land for a period of more than 12 years; and why, may I not ask, is not the head landlord or zemindar entitled to the same protection as against the occupancy of the cultivator?

It may be said that this is mere hypercriticism, inasmuch as there is a right of occupancy already established against the head landlord, and therefore there is no need to protect him against an adverse occupancy of sub-tenant. But it is not to be overlooked that when the tenure of the occupying ryot or even a leaseholder for 20 years has been forfeited, or has been terminated by efflux of time, or operation of law, the zemindar will be met by the sub-tenant claiming a right of occupancy under section 6, as the right of occupancy is given by section 6 without any reservation.

This state of the law certainly requires immediate amendment, putting an end at once to the possibility of any such construction. I should, therefore, expressly guard against any such claim, and enact that all tenancies created or allowed by the occupying tenant, whether holding under the right of occupancy or by written contract or otherwise, shall terminate with such tenancy.

No inferior landholder or ryot should have the power, by any act of his own, to incumber his superior or immediate landlord. It certainly is unjust to bind a zemindar or landholder by a contract to which he was no party, and by legislative interference extend the contract so as to make it operate to his prejudice. If the clause be allowed to remain as it stands, a zemindar who lets land that has fallen into his possession on lease, and makes the lessee covenant not to allow a ryot to cultivate or hold the land for 12 years, may be defeated, inasmuch as the occupancy for 12 years of a ryot gives him a statutory title to hold against the zemindar, who would only have the satisfaction of an action for breach of covenant against his lessee or breaking the lease, leaving the incumbrance on the land. Section 7, therefore, is not a complete safeguard.

It is not to be overlooked that a zemindar is something more than a mere collector of rents; that may formerly have been his position, but the early Regulations recognise his higher status, and under the law he is as much a landed proprietor as any landholder in England who holds land subject to the payment of rent, to the Crown or to a private individual. He has a grant in fee, subject to the payment of rent, like a large body of landholders in Ireland, who hold under Fee Farm Grants, a title created by a recent statute which allowed the conversion of leases made for three lives renewable for ever, on payment of fines, to be converted into fees subject to the payment of the rent reserved by the old lease, and capable of being extinguished should the grantee fail to pay his rent. The zemindar is the proprietor of the land subject to the Government revenue. He

Minute by the Hon'ble Mr. Justice E. P. Levinge, dated the 23rd June 1864.

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has the power to let the land or occupy it personally, subject, of course, to any existing contracts, and resume or take actual or manual possession of the soil on the expiration or legal termination of any contract for its occupancy, and, therefore, should not be deprived of his proprietary rights, and reversionary interest in the soil by the act or laches of a tenant holding for a term certain, or under a right of occupancy after that term shall have expired.

Another matter I would allude to is the difficulty in practically working the 17th section. I think the provisions of that section, declaring when the right to enhance the rent has arisen, are clear, just, and useful. But it is very difficult to fix the rate at which the rent is to be enhanced. I will illustrate this by reference to one case that came before me on appeal.

A farmer of a Government khas mehal sued his ryot to enhance his rent. The right clearly existed, as the land had been greatly improved by an embankment erected at the expense of the Government, thus improving considerably the value of the land and its productive powers. This ryot had lived for years on the property, and it was admitted he had a right of occupancy; but under him were also other ryots, the cultivators. Thus the ryot of the farmer was a middleman; and the same class ryot was to be found in abundance in the neighbouring Government khas mehals, but their rents had not been enhanced, although their lands had been also improved under like circumstances; therefore the rents they paid to their landlords afforded no criterion or basis upon which to calculate the rate of the enhanced rent to be awarded to the plaintiff, the farmer.

The question, then, to be decided was, how much of the rent collected by the ryot, from the sub-ryots or cultivators, was he to retain, and how much was he to pass on to his landlord? * The Court made, what it considered under the circumstances proved, an equitable division, giving somewhere about two-thirds to the landlord, and allowed the middleman the residue, thus considerably enhancing the landlord's rent. This ruling is arbitrary, and it seems to me that as different class ryots are recognised by the section, some rule should be laid down as a guide if the Courts of Justice are to be made the medium, in the event of disputes, as to the rate of rent to be fixed between the landlord and the tenant. That they, *i. e.*, the Courts, must be made, and continue to be, the medium to settle disputes, seems to me clear, once the right of occupancy, at a rent capable of being enhanced, is to be sanctioned and supported by the Act. It must be the case if section 6 (the 12 years' clause) is allowed to remain.

It is possible that in different districts and pergunnahs, by custom, the rate allowed to the zemindars varies, hence it would be inequitable, in an Act expressly framed to support a custom, to fix one rate as applicable to all districts.

This difficulty might possibly be overcome by directing a commission, or a return to be made by the officers of the Government.

If the rate be fixed, then the only matter to decide, if the right to enhance be disputed, is to see if any of the circumstances stated in the 17th section are made out by the landlord; and if so, he would then be entitled to enhance at the rate fixed by the custom of the country to be paid by that class ryot.

I merely throw out this suggestion, as I feel warranted in observing that some amendment is required giving to Courts of Justice, throughout the country, a rule upon which to fix the rate of rent; and if this be done, the amount of litigation must necessarily greatly decrease, the parties will know their fate once the fact is proved, or is self-evident that there is a right to enhance.

If it should be considered expedient to amend Act X of 1859, a careful perusal of all the judgments passed by the High Court on that Act will enable the person having the carriage of the Bill to amend and considerably improve the Act.

Letter from F. B Peacock, Esq., Officiating Registrar of the High Court, to the Home Department, No. 2897, dated the 14th September 1864.

No. 10.

No. 2897, dated Fort William, the 14th September 1864.

From—F. B. Peacock, Esq., *Offg. Registrar of the High Court of Judicature at Fort William in Bengal,*

To—*The Secretary to the Government of India,* Home Department.

In compliance with the request conveyed in your letter No. 1304, dated the 12th July last, and in continuation of the Minutes as per margin, already submitted to Government, I have the honour, by direction of the High Court, to forward herewith, for the pur-

* By the Hon'ble Sir Barnes Peacock, Kt., Chief Justice.
By the Hon'ble C. Steer, W. S. Seton-Karr, G. Campbell, S. N. Pundit, and E. P. Levinge, Judges.

pose of being laid before His Excellency the Governor General of India in Council, copies of Minutes recorded by the following Judges:—

The Hon'ble J. P. Norman, Officiating Chief Justice.
The Hon'ble H. V. Bayley, F. B. Kemp, E. Jackson, and F. A. Glover, Judges.

Letter from F. B. Peacock, Esq., Officiating Registrar, High Court, No. 2897, dated the 14th September 1864.

Leg. Pros., January 1865, Nos. 7—20.

Minute by the Hon'ble J. P. NORMAN, *on the working of Act X of 1859,— dated the 2nd August 1864.*

No. 10.

Minute by the Hon'ble Mr. Justice J. P. Norman, dated the 2nd August 1864.

I AM of opinion that the Legislature cannot now repeal sections 6 and 17 of Act X of 1859, and I would say that whether I thought that the measure was a wise and well-considered one when it passed or not. As stated by Lord Canning, in his message on giving his assent to the Bill, it was felt by the Legislature that it had "long been desirable that the important questions connected with the relative rights of landlord and tenant dealt with by the Bill should be settled that the Bill was a real and earnest endeavour to improve the position of the ryots of Bengal, and to open to them a prospect of freedom and independence which they had not hitherto enjoyed, by clearly defining their rights and by placing restrictions on the power of the zemindars such as ought long since to have been provided." The *boon* once granted cannot be recalled. It certainly could not be taken away without exciting an amount of dissatisfaction amongst the vast agricultural population of Bengal, which no Government could venture to disregard.

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But if I were satisfied that the case of Hills *versus* Isher Ghose had been rightly decided; if the rules for the enhancement of rent, laid down in the Judgment of the 17th September 1863, are to prevail, no alternative would be left me but to say that I believe the mischief would be so great that it would be better at once to repeal clauses 6 and 17 and leave ryots who have no better rights of occupancy than those given by section 6 to make their own bargains with their landlords, than that such a state of things should continue to exist. I feel bound to say that I think that the construction of the sections in question, as propounded in that decision, is not in accordance with the views of the Legislature in enacting them. Considering what I have heard as to rents in the Upper Provinces, and looking at what is said to be notorious, *viz.*, as to well-known lowness of the rents in Bengal, I am not by any means sure that the ryot cannot afford to pay a rent equivalent to one-sixth, or even one-fifth, of the annual value of the produce. In England, it had been formerly estimated that one-third of the produce should go for rent, one-third for expenses of management, and one-third for farmer's profit and interest.

In the Legislative Council, Mr. Ricketts talked of limiting the demand to two-fifths: Mr. Currie thought one-fifth too high. An English writer on agriculture, Mr. Middleton, states that, under the old system of agriculture, three times the rent may have been not very far from a true estimate of the produce of the land, but that, under the improved course of husbandry, the produce is now more generally worth from five to seven times the rent. I have no ready means of access to any modern statistics on the subject, nor do I think necessary for me to refer to them. In considering the proportion of rent to be paid by a Bengalee ryot, it must be remembered that the landlord erects no house or farm buildings, and does no repairs. It may be well, and indeed I suspect, that the ryot's expenses were exaggerated, and that there was no necessity why crops should not be taken on 21 beegahs instead of 16 beegahs out of the 21; that the value of the crop was understated, and that the ryot really could afford to pay a rent of one rupee or even one rupee three annas per beegah. But, *first*, the rules for assessing the rent appear to me to be such as, in practice, would deprive the ryot of all the benefits intended to be secured to him by Act X, and leave bound to the soil on which his house stands, the value of which he has, perhaps in a great degree, created by his labour; and fettered in driving his bargain with his landlord by clinging to the delusive shadow of a worthless right of occupancy.

Secondly.—Though a calculation somewhat similar to that pointed out by Mr. Malthus might usefully be employed by a practical farmer as a guide for estimating what rent he could afford to give for a plot of land, the several terms of the calculation, though capable of being sufficiently ascertained for the purpose of a rough estimate, are not capable of being

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ascertained with sufficient precision to make them a safe guide for judicial decision; unless in case where no better materials for forming a conclusion can be obtained.

Thirdly.—Although a rule somewhat similar in its terms is in England applied in estimating for rating purposes, the *rent which a tenant might be expected* to give so as to get at the "net annual value," under the 6 and 7 William IV, 96, Sec. 1 for railways, water-works, and other property of great companies which from its nature is not usually let at a rent, it is always found that the calculation by which the rent is brought out is a most difficult and elaborate one, after occupying many days in the investigation at Quarter Sessions or before Arbitrators; though in such cases the Court has to deal with the accounts kept with great accuracy, though the system is thoroughly well understood, and the accounts are usually gone through by skilled accountants on each side, and estimates prepared before the case comes into Court, complaints are even then made, that it is next to impossible for the parishes effectually to check and verify the correctness of the several items or the accounts of the Company's profits and expenditure. In applying these rules for estimating the rent which a ryot can afford to pay it was, of course, found that no single figure, on which the calculation was to proceed, could be arrived at except after an elaborate enquiry. The enquiry as to the correctness of each figure was not a limited enquiry, as to the truth or falsehood of a single fact, the existence or non-existence of which would be perceived by the senses, but as to the deduction that ought to be arrived at from a series of ultimate individual facts, the truth or falsehood of each of which is as almost wholly within the knowledge of the ryot of which he himself probably preserved no record, and of which certainly no record would be likely to be produced.

I am not surprised, therefore, to hear of the extraordinary time occupied by the Collector in the investigation of the case mentioned by Sir B. Peacock.

In order to determine what are the "fair and equitable rates" to which a ryot having a right of occupancy is liable to have his rent enhanced by the zemindar, Sir Barnes Peacock, Mr. Justice Bayley and Mr. Justice Kemp, in their judgment of the 24th of September 1862, take the definition of the "rent as given by Mr. Malthus, namely, that portion of the value of the whole produce which remains to the owner of the land after all the out-goings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural stock at the time being."

I will endeavour to show that this definition is not an accurate definition of that rent which a landlord receives. Say that what is defined is "rent" in some sense,—that it is that part of the value of the crops which does not represent the value of the labour of the cultivator, or the price of the use of or the expenditure of the capital, directly or indirectly, employed in their production. Take it to be that part of the value of the crops which is available to the owner of the land simply as such which he may take himself, and which he would get as the return for his land, as distinguished from the return of his labour and capital, if he cultivated the land and took the profits himself to get at the rent paid by a tenant to a landlord, two distinct values must be taken for it. *First*, a compensation in the nature of a commission to the tenant for realising the rent; and *secondly*, a sum to compensate the tenant for his risk under an agreement to pay a fixed sum, instead of a varying amount of profit.

I would apply a different test to ascertain what is the rent which a landlord ought to get. Take from the total value of the produce of the land the actual cost of cultivation, the cost of replacing stock, and the interest of the money value of the fixed plant and stock, and of the floating capital necessarily employed in carrying on the business of cultivation, and the balance that remains is *the profit arising directly from the cultivation of the land.* This profit has to be shared between the owner of the land as rent, and the cultivator as tenant's profits. Both are uncertain quantities, the proportion of the one to the other is determined not by any definite or certain rules, but by the laws of supply and demand, and is affected by all the varying circumstances which interfere with the operation of those laws.

I believe the actual amount of agricultural tenant's profits is a matter which is practically incapable of being exactly ascertained. It is, in fact, the

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utterly uncertain margin of profit realised by the tenant after the deductions are made including the rent.

In the cases of rating Railways, Canals, Gas and other Public Works which are very rarely let, or if let, are dismissed with various advantages, which make the rent not simply a rent for the landed property with the buildings on it. As the rent cannot be ascertained by any evidence of what has been or would be paid for such property, the Courts have been compelled, from necessity, to make arbitrary allowances for tenants' profits which have varied very greatly as various percentages have been assumed to be the rates of profits, which trading capital embarked in such enterprises might be expected to return. At one time, and for some undertakings 20 per cent (that is four times the current rate of interest) was allowed in addition to 5 per cent. (see the Queen *versus* The Grand Junction Railway Company—4 Queen's Bench Reports, p. 18); more recently, however, 10 per cent. (see Archbold's Poor Law, 219); and sometimes in very large and safe undertakings less has been allowed for tenants' profits in addition to interest. On small capitals invested in petty trade or agriculture, of course very much greater profits would have to be allowed.

The definition of Mr. Malthus would give all the extraordinary profits of the cultivation to the landowner and not to the cultivator. Thus, if the landlord obtains the whole amount of the "rent" as defined by Mr. Malthus, he would get the whole of an extraordinary profit which might be realised by the special and personal skill, diligence, or enterprise of his tenant. So also he would get the whole extraordinary profit of unusually productive seasons. But there is nothing in the terms of the definition which renders the landlord liable to share losses, if there should be a loss and no profit. It is a fallacy to suppose that he who bears no losses can be entitled to profit; the landlord's rent is therefore the price of the occupation of the land, and not the profits, or any part of the profits of the cultivation. "Rent", as defined by Mr. Malthus, is rather the amount, the appropriation of which is the legitimate subject of negotiation between the landowners and a person who contemplates becoming his tenant, than the amount which the landlord actually receives. Mr. Recardo defines, far more accurately than Mr. Malthus, the *rent which the landlord actually receives.*

Singularly enough, in quoting the passage from Malthus, the Court, on the 24th of September 1862, altered the word *stock* into *capital*, and in working out the rule in their Judgment of the 17th of September 1863, Sir Barnes Peacock and Mr. Justice Sumbhoo Nath Pundit appear to me to allow merely interest on the money value of the capital and no tenant's profits to the ryots; they seem to assume that the rate of profit of agricultural stock is a known and definable quantity. No enquiry took place as to what were the ordinary "profits of agricultural stock," or, in other words, tenant's profits," in the district. They appear to treat of profits or interest on borrowed capital as convertible terms. But I apprehend that Mr. Malthus means something very different from that when he refers to the profits estimated according to the rates of agricultural *stock.* The fact is, that Mr. Malthus' definition, even if true as a definition, becomes valueless as a rule for assessing rent, because one of the terms of the definition is more uncertain in its nature than that which is defined. Taking the figures allowed by the Court to be correct, I think a practical farmer might make the calculation as follows:—

	Rs.	A.	P.
The total produce is	148	0	0
But the average is, if allowance is made for the risks of bad seasons	133	0	0
Tenant's expenses.			
Ryot's labour at six pice per day	36	0	0
Additional labour	12	0	0
Boy and bullocks	12	0	0
Seed	16	0	0
Interest on floating capital required to pay for labour and contingencies as allowed by the Court	8	0	0
Rent of land	27	8	0
Total cost of cultivation	111	8	0

Plant and Stock.

	Rs.	A.	P.
House built by ryot on the land	15	0	0
Four bullocks	48	0	0
Tools, &c.	3	0	0
Cow-shed and golah for gram	7	0	0
11	73	0	0
Interest on the above sum of Rs 73 at Rs. 37 per cent. per annum as allowed by the Court below	27	0	0
Allowance by Court to replace stock at 13 per cent.	9	8	0
Total	148	0	0
Now, if money is worth as more to a ryot than 12 per cent., take interest as allowed as above on plant and stock at 37 per cent	27	0	0
Less value of money at 12 per cent	9	2	0
Minus	17	14	0
The balance, i.e., 25 per cent on the invested capital must stand for tenant's profits. But a person estimating what rent he should afford to make would take into consideration the risk of loss of crops or unfavourable season, estimated by the Judge at Rs. 15, and reducing the average produce from Rs. 148 to Rs. 133 as above mentioned	15	0	0
Thus leaving balance for tenants' profits on the average of years	2	14	0

Thirteen per cent. appears but a small allowance for the cost of insurance and renewal of the ryots' plant and stock as stated above.

Again, I think, there is no doubt but that 12 per cent. by no means represents the value of money to a ryot, or the rate at which he could borrow if he wanted it; and, in fact, that 37 per cent. represents really nothing more than the interest of money. It seems to me plain that the price of capital ought to be taken into consideration just as much as the price of coals is considered in estimating the rent which a tenant may be expected to pay for a gas work or a railway, particularly when one of the conditions of the problem to be worked out is probably that the ryots have not money at command, and must go to market, and pay for it at market price as they would pay for any commodity necessary to be employed to bring into existence the value out of which the rent is to be taken. For these reasons, assuming the figures to be correct, I think that, with rent at Rs. 27-8, a practical farmer would say that no margin whatever was left for tenants' profits, or to cover the risk of loss of crops by bad season, and that he could not, therefore, afford to pay the rent.

I do not think that the term fair and equitable rates mentioned in section 5 is an expression equivalent to "rent," as defined by Mr. Malthus. "Fair and equitable" are relative terms, and the Act appears to me to point out very clearly the data *with reference to which* the rates are to be "fair and equitable."

Section 5 says that—"In case of dispute the rate previously paid by the ryot is to be deemed fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act." No suit to enhance the rent of any ryot can be brought without the service of any notice under section 13 specifying the ground on which enhancement of rent is claimed And by section 17 no ryot, having a right of occupancy, is liable to enhancement of the rent previously paid by him, except on some one of the grounds mentioned in that section. It is therefore clear that section 17 does not interfere, and *was not meant* to interfere, with the free right of the zemindar to enhance, and to compel him to take from the ryots, having rights of occupancy, lower rates than he might be able to obtain from new tenants if he were at liberty to treat with them. It is not how many applicants may be claiming to obtain possession of the land at increased rents for building or other purposes, the zemindar cannot enhance unless he can bring himself within the provision of section 17.

In order to ascertain what are the privileges which a ryot acquires by a right of occupancy, and what are fair and equitable rates of rent as between him and the zemindar, it is necessary to bear in mind that in this country the reclamation of land has been, and is usually, effected by the ryot without any

expenditure of capital on the part of the zemindar. At his own cost the ryot has perhaps converted rice fields into homestead and garden land, built a house and dug a tank.

I would, therefore, and by way of proviso to the first ground of enhancement in section 17, say "that in enhancing rent under this section, the ryot having a right of occupancy and not the landlord, shall be deemed to be entitled to the benefit of all such special advantages (as last above mentioned) as shall have been created by his own sole agency and not at the expense of the zemindar. Provided always that this rule shall not apply to cases where it shall be proved that the ryot has been allowed to hold the land for a fixed period at a lower rent for the purpose of enabling him to make such improvements."

Subject to this observation, and an addition which I shall presently suggest, I would leave the first clause of section 17 as it stands.

Under the second clause of section 17, when the landlord seeks to enhance, simply because the value of *the produce* and of the land *has been increased*, otherwise than by the agency or at the expense of the ryot, the ground of enhancement might be thus stated:—

That the old rent was a fair and equitable rent with reference to the former value of the produce; but the value of that produce being now greater, the landlords claim that the rent should be increased.

The reason or ground of increase must surely be the measure of its extent; and it is difficult to see how anything, except a rate bearing the same proportion to the old rate as the present value of the produce bears to the former value could be fair and equitable, with reference to that which is the ground and sole ground of the enhancement permitted.

The Court, however, in Hills *versus* Isher Ghose, in the judgment delivered on the 24th September 1862, rejected the rule of proportion as applicable to such a case, and assigned two reasons for such rejection, both of which appear to me to be fallacious.

They suppose, *first*, that the rent may have been fixed originally on the principle of allowing the landowner a money rent equal to one-third of the gross produce. But 5 annas and 4 pie would be one-ninth of 3 rupees the value of the produce at the time, with reference to which the rate, in the absence of the evidence to the contrary, must be taken to have been fair and reasonable. If one-ninth of the remaining 6 rupees, the present value, had been given, the rate would be 10 annas and 8 pie, and not 1 rupee 5 annas and 4 pie as the Court supposes.

Secondly—The Court say that "the probabilities are that the expenses of cultivation of the same quantity of the land producing crops rather short of the average, than in excess of it, cannot greatly have exceeded the expenses of former years. Indeed, we do not find that the tenants ever contended, or proved in the Court below, that the expenses of cultivation had increased. If the expenses were the same and the proceeds were 6 rupees a beegah instead of 3 rupees a beegah, there would be a clear profit of 3 rupees, although paying the former rent."

Now I apprehend that, in the absence of evidence that some cheaper system of cultivation had been introduced by the very terms of the proposition, it is clear that as the increase in value was the increased value in grain and other crops, the expense of feeding the ryot himself, those who assisted him in cultivation and his cattle, must have increased, and surely it may fairly be assumed that the cost of his implements of husbandry, of the repairs of his house, must also have increased in consequence of the necessarily increased cost of feeding the workmen employed for their production. The wages of labour in country districts are generally reduced, and kept by competition to little more than the bare cost of maintaining the labourer.

Increased price is generally occasioned by, and in fact is often only another term for, increased cost of production. In order to provide a simple rule for enhancement on this ground, I would enact, as an addition to an amendment of section 17, clause 2, that where enhancement is sought on the ground that the value of the produce has been increased, otherwise than by the agency, or at the expense of the ryot, the ryot shall be liable to pay an enhanced rent, which shall bear the same proportion to the total annual value of the produce of the land on an average of three years prior to the date of the enhancement, as the rent sought to be enhanced bore to the total value of the produce

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at the date when such rent shall be proved to have been first fixed or assessed upon the land.

In case of enhancement, on the ground that the *productive* powers of the *land have been increased*, otherwise than by the agency or at the expense of the ryot, the rule of proportion would not apply; because, if the productive power increased otherwise than by the agency of the ryot, a very large proportion, if not the whole, of such increase is an increase in the amount of rent which the land is capable of yielding, and belongs to the landowner. Mr. Recardo's statement that "rent" is always "the difference obtained by the employment of two equal quantities of capital and labour" applies strictly to this increase. Probably, therfore, cases of such increase should be dealt with under the first clause of section 17. The second clause of section 17 would thus protect the zemindars from loss by any falling-off in the purchasing power of money, as gold and silver flow into the country; the first clause would, I think, effectually reserve to them a gradual increase in the rent, as the general average of rents throughout the country rises with the increased demand for land, and the increased demand for land, and the increased prosperity of the country. For instance, in Hills *versus* Edoo, if one month is too low, the rent might be enhanced to the rates prevailing for similar land in the neighbourhood. I would expressly restrict the right of occupancy under section 6 to an actual occupancy for the *purposes of agriculture*, so as not to give the ryot a right to any value the land might acquire for building or other like purposes.

The definition, or rather statements, respecting rent, by Mr. Mills is—"Any land yields just as much more than the ordinary profits of stock, as it yields more than what is returned by the worst land in cultivation. The surplus is what the farmer can afford to pay; if he would receive more than the ordinary rate of profit, the competition of the capitalists, that competition which equalises the profits of different capitals, will enable the landlord to appropriate it; the rent, therefore, which the land will yield is the excess of its produce beyond what would be returned to the same capital if employed on the worst land in cultivation."

Now, this is no rule by which rents could be assessed, and is wholly valueless for practical purposes. If any one attempted to apply it, it would only deepen the obscurity of the subject. What is the worst land in cultivation? Where is it? How is the Collector to find it, or know it when he sees it? Are there not exceptional cases, which compel people in particular districts to cultivate land which yields little or nothing beyond the barest subsistence to pauper cultivators? Is the very profit beyond that bare subsistence "rent" which a landlord is to be allowed to realise, as the natural price of the occupation of his land.

I merely mention this to show that Mr. Mills' definition will not afford a clear, simple, and practical rule for the adjustment of rents.

In order to prevent the repetition of suits for enhancement, it might be enacted, in accordance with the principle of the suggestions of Mr. Justice Seton-Karr, that every decree in a suit for enhancement in favour of the zemindar shall operate as a settlement or bar for 10 years at such enhanced rent, determinate nevertheless on the last day of the month of Choitro in every year of the said term by the tenant giving proper notice for that purpose. Considering that the value of the land is, in most cases, created by settling it with ryots, who should not be allowed to gain rights of occupancy, though settled on the land by a person having only a temporary interest, such as a farmer or dependant talukdar. But section 6 is exceedingly ambiguous, and I am not sure that I understand how the Legislature meant to deal with such cases.

When it may now be taken to be established by the decisions of the Court that no right of occupancy is created by the holding under a lease for a fixed term of years, that a lease contains an implied covenant to surrender up quiet possession at the end of the term, and the express stipulation that the term shall be seven years or the like, is contrary to the presumption that it is to create a right to hold for a longer period.

Holding under pottah in section 6 is satisfied by holding under a pottah in which no term is specified. But to remove any doubt on this point, it should be cleared up by a legislative declaration. I would allow mesne profits to be recovered under section 23 as suggested by Sir B. Peacock.

Minute by the HON'BLE H. V. BAYLEY, *on the working of Act X of 1859,—dated the 5th August 1864.*

Minute by the Hon'ble Mr. Justice H. V. Bayley, dated the 5th August 1864

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No. 12.

THE letter from the Secretary to Government, Home Department, dated 12th July 1864, reached me yesterday.

2. It asks for the sentiments of the Judges at their earliest convenience on the working of Act X of 1859, and as to any amendment which, in their opinion, the law may require.

3. I have not seen the working of the law in the zillahs, except so far as it may be gathered from the decisions of the Lower Courts which have come before me in appeal; and as all the appeals under Act X of 1859 were, for a long time, reserved for the Bench of the Chief Justice, I only have heard such appeals as came up immediately during the three months I was on that Bench.

4. I have always felt that our permanent settlements raised zemindars from subordinate land revenue collectors into landowners with full proprietary rights, but did not diminish or question any of the rights of ryots which, before, were known as theirs by the custom of the country. That settlement left it as a matter of trust to the zemindar that the liberality, so recently and largely shown to them by Government, would, combined with self-interest, induce them to foster the ryot, and protect his rights, and levy only *fair* rents, *i.e.*, only those well known and acknowledged as such on the spot by usage. A more strict definition of those rights might, perhaps, otherwise have been *enacted* in the laws of that time. The promise to enact protection for the ryot, if necessary, is in section 8, Regulation I of 1793. Either the Government has thought it unnecessary, or has failed to do so till now.

There are, it is true, some protective provisions in Regulation VIII of 1793; but wherever clear definitions of rights and privileges are stated in that and other laws of that date, they relate chiefly to declaring and securing the future improved prospects of the zemindar, and mainly to his relations with Government, the zemindar being trusted to deal righteously with the ryot.

5. This trust has not, to my mind, been satisfactorily accomplished in the way in which the settlement of 1793 expected; but according as the zemindars, from time to time, were pressed by the Government Regulations for their revenue, they, on their part, urged that they could not pay their *revenue* if means were not afforded to them to realise their rents promptly and fully. Thus the Government enacted Regulations VII of 1799, V of 1812, and VII of 1819, all, if not against the ryot, not in his favour, but certainly tending to define the law for the landlord and encourage rack-renting.

6. The civil and fiscal Courts since 1793 have gone on the strict judicial interpretation of the law, *i.e.*, according to the ordinary meaning of the terms used in them, not by the broader scope of the philanthropic views and trust on the zemindars, which Indian statesmen of 1793 seem to have had in view in respect to the ryot. Thus it has come to pass that the Court, not finding in any laws the enactment that a ryot who had occupied, or should occupy, for 12 years should not have that occupancy disturbed, have, on two occasions only, I believe, given this protection to the ryot by judicial decisions; while the current of these decisions has been generally to negative such a claim, and mainly because it was not expressly provided for in the laws.

7. To proceed at once to Act X of 1859. Section 6, in my view, declares that the ryot has a right not to be removed from occupancy, if he has had occupancy 12 years,—so at least I read the section in the ordinary construction of the law. I may here remark that I am not aware that the *retrospective* operation of section 6 has ever been expressly ruled by the High Court. Its terms may have been incidentally construed as retrospective, but still doubtfully. As, however, I believe the Legislature in 1859 intended that the effects of the section 6 should be to secure by law to the ryot that which, as above stated, our Courts had hitherto refused because not in the law, and intended also to do so with retrospective effect, the Legislature should state this in more positive terms than are in the section as it now stands. I further believe it will be well to do so, for I think that the usage of the country at the time of the decennial settlement was that *long* occupation secured protection from ejectment. Our laws do not say so in terms, but they rest much on usage; and I think that no one who has made any settlement, or moved about the country, can have failed to see in his conversations on the spot with the natives on

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ordinary agricultural subjects that even now, as among themselves, they regard the status and right of *new* and *old* ryot respectively as quite different things. They know nothing (or at least did not know formerly) of 12 years' limitation or of 20 years' prescription. They thought, and their views were supported by the usage referred to and respected by our laws, that, so long as a ryot was *an old* as contradistinguished in *their minds* from a *new* ryot, it made no difference in his right of occupancy, if his pottah had been given, or his rights accrued on or before the 1st of December 1790, or in 1791, or 1795.

8. In this state of things it cannot be said that it was not open to the Legislature of the present day to declare and enact their own definition of time and to right of occupancy. They adopted that of 12 years, and I see no objection to this.

9. The objection to the section now is that it creates *new* rights for the ryot against the zemindar, which was not part of the contract of the zemindar with us as provided on the deed of that contract, *i.e.*, the laws of 1793; and that it is not shown at what rate the ryot is to hold, whether at an inadequate one, if it had been his good fortune so to hold for the last 12 years, or at fair and equitable rates; and if the latter, on what data, with reference to sections 6 and 17, such rates of rent are to be ascertained.

10. Now I quite think that the rate to be paid by ryots, even occupying for 12 years under section 6, should be a fair and equitable rate. At the time of the decennial settlement there was a known usage, custom, and understanding as to what were fair and equitable rates for each pergunnah, which usage, for better or for worse, was generally accepted as the rule of decision, where it was necessary to raise any question as to local rates.

11. So many Courts and hangers-on of them to foster litigation were not then at hand for summary suits; the frenzy of litigation was not of long growth, nor so rooted as a system as it has now become by injudicious neglect of means to stop it, and a marriage donation or pooniah salamee satisfied the zemindar in lieu of higher rents by degrees. Sometimes (on the other hand) possibly the zemindar's influence was brought to bear on police and revenue officers or others to help the ryots in a difficulty.

12. All these things have been very greatly changed; and we want to discover, with a *minute* and *legal precision*, what is a fair and equitable rent. In order so to do this, a detailed survey and settlement of *all* the jotes of all Bengal, under Regulations VII of 1822 and IX of 1833 (as made in Cuttack and the North-Western Provinces), would alone really suffice, or obtain such precision. But the expense of this would be extremely and disproportionately heavy, and there is no reason why a fair and equitable rent for all parties should not be ascertained by other means.

13. These means should, I apprehend, not be too expensive; but they should be effectual, and should also be congenial to the feelings of all parties, and to the fixed ideas of the native mind. Such feelings and ideas in matters of this kind, though not to be duly admitted on all occasions, are, far too often, repudiated for abstract theories of European political economy which, though correct as such, and welcome where understood, only create repugnance and resistance when not so, especially from their being both unintelligible and unsuitable to the wants and usages of the agricultural population of a Bengal village, when considered irrespective of judicial constructions of law.

14. It has been ruled that fair and equitable rates are those which will be given by others for the same kind of land. This may theoretically be right, but the customs and usage to which I have above adverted will hardly recognise this, for the European theory refers the extreme rates that might be so obtained, the result of a full and long competition by auction; while by custom of the country and the feeling of the native agriculturalist, that rate would be fair and equitable, and also considered to be what would give, which would leave a margin *of profits* as understood by the usage of the locality, *i.e.*, such a rate as was known as the pergunnah or prevalent rate for the same kinds of land, but was not an *extreme* rate of the utmost farthing realisable.

15. What is a fair and equitable rate may be as understood should, I think, be in this view ascertained by a Commission for each district consisting of five persons:—

(1)—The Collector or his Deputy or Assistant.

(II)—A European or other settler.
(III)—A Hindoo, and
(IV)—A Mahomedan zemindar or lakhirajdar, and
The holder of subordinate tenure, or a chief ryot or mundal.

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The Commission should visit each pergunnah in its district in the cold season, and fix approximately on the spot such rates as it decides, on investigation on this principle, to be fair and equitable *for each pergunnah*, or, if it is preferred, for *each circle*. It should publish a nerick-bundee or rate settlement. No appeal or revision should be allowed from its decision to any *Court*, but a paramount authority to revise or confirm should rest with the local Government. This rate settlement should be the basis of rent decrees for the Courts, civil and fiscal, just as the settlement papers are in the North-Western Provinces for decrees of the same nature. Such a rate statement should not be changed for 10 years, and no second suit to enhance should be brought till 10 years after the first decree.

Section 11.

16. Section 11 is a great improvement. The power to compel the ryots' attendance was open to abuse, and absurd.

Section 13.

17. Section 13 is, I think, efficient; and, as far as I have seen their motives, meet their object.

18. As for section 17, which is new, or rather gives *new* scope for demands for enhancement, it may be true that demands, if unjust, will not be decreed, but still the section gives *enlarged* means of harassing a ryot by this new power. We had a case last week which illustrates my meaning. A ryot had got a pottah for waste land many years ago; he had reclaimed it, had planted an orchard, and dug a tank, and built a house. The railway eventually came near it. A suit was brought by the landowner to enhance the rate, as if *the whole land* was improved by agency other than of ryot. It was prosecuted through all the stages, even to appeal in our Courts; and the fact that the land had been reclaimed from waste by the ryot, that he had dug a tank, made a house and orchard, was kept out of sight as much as possible. The appeal was dismissed as to the increased value of the land arising from the tank, house, and garden made by the ryot, and decreed only in proportion to the increased value which might be proved by the landowner to be owing solely to the proximity of the railway.

Section 28.

19. We have had cases in which doubts have existed as to whether section 28 refers to suits, and so open an appeal to the Civil Court; or whether it only refers to executive acts of the Collector. It has been ruled that it refers to suits, but this is embarrassing in respect to lakhiraj suits, and the limitation under Act XIV of 1859. The words of the law are still obscure, and therefore the meaning of the Legislature should be declared in more *express terms*.

Section 105.

20. Suits to reverse sales under section 105, however great and palpable their irregularity, seem not to be provided for, or rather to have been left purposely unprovided for—see the Judgment of the High Court, 16th March 1864 (Judges Trevor, Loch and myself). I think there should be some executive or judicial tribunal to take cognizance or have a power to revise these sales. The Commissioner of Revenue might have it.

21. I have been obliged to write this memorandum in great haste, as I only got the papers yesterday, and am informed that the opinions of the Judges are required as early as possible.

Minute by the Hon'ble F. B. KEMP *on Act X of 1859,—dated the 27th July 1864.*

Minute by the Hon'ble Mr Justice F. B Kemp, dated the 27th July 1864.

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The Government have asked for the opinion of the Judges of this Court as to the points in which Act X of 1859 appears to require amendment. In compliance with this request, I have the honour to record the following remarks, which are submitted with much diffidence—

Act X of 1859 was passed after great deliberation. The Legislature to some extent fulfilled the solemn promise made by the Government at the time of concluding the permanent settlement of the Province of Bengal with the zemindars—a promise which recognised the principle that it was the duty of

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the ruling power to protect all classes of the people, and more particularly those who, from their situation, are the most helpless, *viz.*, the ryots. It is proposed by the Honourable the Chief Justice Sir Barnes Peacock and Mr. Justice Sumbhoonath Pundit to amend this law before the working thereof, for good or for evil, has been fully tested; those learned Judges would repeal the most important provisions of the Act which protect the weaker class, the ryots, and would relegate them to the undefined and hopeless position which has been their sad lot since the period of the perpetual settlement, and from which it was the main object of that enactment to rescue them.

I cannot concur in the propriety of repealing sections 6, 17, and 76 of the Act, though I would respectfully suggest certain additions to the law, which would, I think, be of practical benefit to the agricultural community.

It is not pleasant to contemplate the condition of the ryots; it has always been wretched in the extreme. Every thing else is advancing in this country,—education, commerce,—but the condition of the ryots has not improved. As far as I can judge from books, the ryots were, comparatively speaking, more prosperous under the Hindu than under the Mahomedan rule—much of course was hoped from the enlightened policy of the British Government, many promises were made and hopes held out to be broken and deferred until Act X of 1859, when those promises were to some extent fulfilled; and that the said Act is a great boon to the great agricultural community no one will, I believe, deny. The rights and privileges of the ryots of holding possession of the lands which they cultivate so long as they pay the rent assessed thereon; privileges which—in the words of the great founder of the perpetual settlement, "are not compatible with the proprietary rights of the zemindars—" were declared to exist.

I think it will be admitted that, at the time of the perpetual settlement in 1793 A.D., the only parties who had any proprietary right in the soil were the ryots, and not the zemindars. It suited the policy of Lord Cornwallis to create a landed aristocracy, and the proprietary right was, for the first time, declared to be vested in the zemindar. Under the Mogul Government the tenure of the zemindars was temporary and *quasi*-official; they were farmers or contractors for the revenue. But the rights of the ryots were expressly reserved at the time of the perpetual settlement, and their recognition and definition promised; that this promise has not been fulfilled was owing to no fault of theirs, but to the neglect of the ruling power. Successive Governors General and the Court of Directors never lost sight of this promise, though obstacles to its fulfilment arose which were thought to be insurmountable.

The following may be taken as one of many instances of the good intentions of the Court of Directors:—

In 1824 they thus addressed Lord Amherst, the Governor General of the day:—

"Should you succeed in securing the ryots those rights which it was assured by the intention of the perpetual settlement to preserve and maintain; and should you, in all cases where the nature and extent of those rights cannot be now satisfactorily ascertained and fixed, provide such a limit to the demand upon the ryots as fully to leave to their cultivators profits under leases of considerable length, we should hope that the interests of that great body of the agricultural community may be satisfactorily secured."

Act X of 1859 provides that every ryot, whether he holds under a pottah or not, who has cultivated or held the land for a period of 12 years, "*has*," not "*shall have*," a right of occupancy; this is the right which was recognised in 1793. The only difference being that the period which gives the right is defined and declared. This period may be too short or too long, but this does not affect the right as long as a fair and equitable rent, which must depend, and that all along depended, upon local usages and customs, is paid. If a fair and equitable rent be considered to mean the highest rent which the zemindar can obtain by offering the land to public competition, then I can see no difference in the position of the ryot with so-called rights of occupancy is a bitter mockery.

If a right of occupancy is to be recognised, some limit must be put upon the discretion of the landholder in adjusting the rent of the party possessing such a right. I am not aware that, at any time of our rule, the payments of the ryots have been regulated by competition. There has always been some

pergunnah rate or some rule common to a neighbourhood founded upon custom and usage. The assessment has never been the subject of a separate bargain or suit with each ryot. If we have not sufficient data by which to fix what is a fair and equitable rate for each district, the sooner such information is acquired the better for the peace and contentment of the millions whose interests are at stake; to hand them over to the tender mercies of the zemindars is simply to ruin them.

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At the time of the perpetual settlement the office of canoongoe existed; these officers were independent of the zemindars, and their duty was to collect and record the rates of the different estates and other statistical information; unfortunately, this excellent institution was done away with, and the attempt to revive it in Lord Moira's time proved a failure,—the then canoongoes were underpaid and became the mere tools of the zemindars.

Our right of interference being clear, nay, specially reserved, at the time of the perpetual settlement, I can see no good reason why an attempt should not be made to define on some broad equitable principle what are fair and equitable rates. The task is one of great difficulty; but it may be overcome by firm and persevering exertion. Pergunnah rates are still in existence in many districts in Bengal. The district of 24-Pergunnahs might be taken as a model; and I can see no reason why these old rates, adapted to the present state of things, and the increase in the value of the produce, should not be taken as the basis of a general assessment of the rates in each district. Something must be done, and that quickly, either say the ryots have no rights at all, or, if they have, then make them worth possessing.

That it is quite possible to ascertain the rights of the ryots, and the rates at which they ought to pay, leaving them a fair remunerating profit, is clear from the management of khas mehals and ryotwaree settlements; indeed, at one time the Court of Directors ordered the purchase by Government of all estates exposed to sale for arrears of Government revenue, in order that the rights of the ryots might be ascertained and defined.

The provisions of section 17 are, I think, unobjectionable, and I would not alter or amend them.

A provision for the recovery of mesne-profits in ejectment suits should be made.

There should also be a provision for reference of disputes or arbitration.

The period within which the ryot is permitted to resign his tenure, as also of the notice under section 13, should be enlarged.

Minute by the HON'BLE E. JACKSON, *on the provisions of Act X of 1859.*

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The question upon which our opinion is asked as whether any alterations should be made in the provisions of Act X of 1859. That Act has now been in operation for five years. Ample opportunity has been afforded to observe the working both of the rights which it declares to appertain to landlords and tenants generally, and of the procedure which has been enacted to give effect to those rights. No Act of the Legislature in this country was ever passed which has been the subject of more contention than this. The great difficulty in making any recommendations as to its improvement arises from the uncertainty which exists as to the interpretation of many of its most disputed clauses. I am most averse to constant change in the law. Such change is in itself a very great evil; except, therefore, where change is absolutely necessary. I would not recommend any. I would not change any of the provisions of Act X of 1859, because interpretations have been put upon them, the correctness of which is doubtful, unless it is quite certain that those interpretations are final, and not open to further question.

2. The framers of the Act have endeavoured to lay down the rules and principles upon which the relations of landlord and tenant are to be guided in the fewest possible words. The results have been apparent—great simplicity of expression attended by equally great diversity of interpretation. I see no objection to the wording of the Act, but I entertain many objections to the interpretations which have been put upon several of its clauses. I hesitate, however, to recommend any alteration even in those clauses, because these interpretations

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are not finally settled, and I entertain a hope that they may be yet set aside by the Courts themselves. It is evident that even among the Judges of the High Court, there is great difference of opinion as to the correct interpretation of these clauses.

3. The most contested clauses of the Act are those at the commencement, which may be called the declaratory sections.

4. Those regarding which there is the greatest controversy, leading in fact to this reference to the Court, are sections 6 and 17. It is questioned whether any ryots in Bengal ever held rights of occupancy until section 6 was enacted. It is said that the granting of a right of occupancy to every ryot after 12 years' possession, in all cases in which that right is not expressly reserved, is something completely new, and therefore unknown in this country. I am inclined to think that this is a new enactment, and that no such sweeping right existed before this Act was passed. Certain classes of ryots, undoubtedly, held rights of occupancy. In Bengal khoodkast ryot descendants hold them to the present day, and where ryots have been granted lands on the old customary khoodkast tenure, such ryots also may hold rights of occupancy. But this right of occupancy does not commence on the expiration of 12 years' possession. It appertains to the tenure from the time of its creation. The rights of khoodkast ryots are, therefore, very different from the rights of occupancy enacted in Act X of 1859; other description of ryots may also hold rights of occupancy. I apprehend that such rights are in no way interfered with by Act X. It is still an open question whether section 6 has retrospective effect. If it is considered that it enacts a new right, it is quite possible that it may yet be held not to have retrospective effect. Any injustice to landlords, which the sudden enactment of such a law might be considered to cause, will be at once obviated if it is declared that such right cannot take effect until 12 years have elapsed from the passing of Act X. Landlords will then have ample opportunity to take measures to prevent their ryots obtaining any such rights—at least all such ryots as do not at present possess them. Khoodkast ryots and other ryots with rights of occupancy will, however, under this law, instead of relying for proof of their rights on doubtless leases and doubtful evidence of the nature of their tenures, be able to prove them by a simple 12 years' occupancy. If landlords are negligent, and do not trouble themselves to carry out the provisions of the law on the subject, it is probable that they may find some of their ryots gain rights of occupancy whose rights to such occupancy may have been left in doubt when their tenures were granted to them; but this will be owing to the landlord's own negligence. Among the clauses of the decennial settlement Regulations there are special injunctions on landlords to enter into special agreements with their ryots. These injunctions are systematically disregarded to the great detriment of the ryot, who is, from the absence of any special lease, left in constant suspense as to the terms upon which he holds his tenure.

5. The Government in the decennial settlement retained to itself the power of enacting rules for the benefit of the ryot. It has then, in my opinion, full authority to protect the ryot from these doubtful arrangements, and has authority to make such an enactment as section 6, Act X of 1859, with the view of affording him such protection. I think it is right and proper, in order to force landlords to regard the provisions of the decennial settlement regarding pottahs and leases, that such an enactment should be passed. It seems to me that it matters very little to landlords who really superintend the management of their estates, and take care that no ryots obtain land except on proper leases, specifying the terms for which the lease is granted and who require ryots at the expiration of their term to take out new leases, whether such a law as section 6, Act X, is passed or not. They will not be affected by it. They have it in their power to put an end to every right of occupancy which exists in their estates as the tenure falls in, if they will only take care to let out the tenures again on term-leases. The only landlords who can suffer by the law are those who pay no attention to their estates, and who disobey the direct injunctions of the Legislature under which they hold their estates.

6. I see no reason, therefore, for altering this section. In connection with it, section 17 of the Act has next to be considered. It is useless to give a ryot rights of occupancy, if at the same time his rent can be raised above what he can afford to pay,—above what is generally paid in the neighbourhood,—above

even what is paid by those who have no rights of occupancy. But it was necessary to enact some rules under which the rents of ryots who held rights of occupancy could be enhanced. It would follow, from the feature of things, that the parties would never settle the question amicably themselves. It may be supposed that they had always settled it amicably up to the passing of this Act. But this is a great mistake. The disputes on this subject were the cause of constant affrays and riots, and long-continued oppression and violence and disagreements between the contending parties, extending, in some instances, over very many years. The Legislature felt some difficulty in laying down any special rule as to the extent to which, and the principle on which, rents of occupant ryots ought to be raised by the Courts. An attempt was made, as the Act was passed through the Legislative Council, to fix some limits on the extent of enhancement, but it was admitted, in the debate which followed on this proposition, that it was impossible to fix any one standard for the whole country. The result was that it was declared that rents of ryots with rights of occupancy could only be enhanced under certain circumstances, and then only to fair and equitable rates.

7. I quite concur with the able Members who framed this law, that this was the best which they could have laid down. It may be an indefinite rule, but it left in the hands of both parties the power of adducing proof of all circumstances bearing on the question, and left the Judge an equitable power to decide what was a fair rent. It was, however, still necessary for the Courts to establish some general principle upon which enhancement should be awarded.

8. A principle was accordingly laid down by a Division Court of the High Court. This principle is very much objected to, and I agree with those who think it was an erroneous principle. I do so with the utmost deference to the learned Judges from whose opinion I differ, and I entertain much diffidence as to my own opinion when considered with theirs. But I have given the subject very long and careful thought, and I have had some personal experience in investigating the subject, and I am fortified in my opinion by the results of that ruling to which I allude, which convince me that the mode in which it has been declared that "fair and equitable" rates of rent shall be ascertained must lead to great injustice to the ryot.

9. The principle which has been enunciated may be a correct principle for ascertaining a fair rent in other countries in which the highest competition for agricultural holding exists; but it does not follow that it holds good in this country. I would admit that ryots with rights of occupancy have no right to hold at a lower rate of rents than ryots without such rights, that is, than what has been proved by an experience of some years, that ryots without rights of occupancy can pay and do pay, and therefore that all other ryots can pay. I admit that a right of occupancy confers no special right in the matter of rents. The rents of ryots with rights of occupancy are admitted revisable and enhanceable, and they must pay the fair rate of rent which is generally paid in their neighbourhood. It does not follow that their rents can be enhanced to any rate which any ryot without right of occupancy may agree to pay. Still less can their rents be enhanced, as was done in the instance to which I refer, to a higher rate than that which any such ryot in the whole pergunnah had ever paid. Every ryot who takes a lease at a higher rate than that which has always prevailed in his village enters into a sort of speculation. It may be that circumstances have so changed that he will be able to afford to pay the higher rent. It may be that he will find that it is not worth his while to cultivate land at that higher rate; and in that case he will probably throw up the lease. Ryots with rights of occupancy are entitled to be protected from enhancement to such speculative rates. But at the same time, when years pass on, and it is proved that such new rates of rent can fairly be paid, and ryots find the land remunerative at these rates, ryots with rights of occupancy are bound to pay these rates. Circumstances have been proved that such higher rates are fair and equitable. I acquiesce then in the principle that the rate of rent of ryots with rights of occupancy should be guided by the rule of competition, but not to the utmost extent to which competition can be carried, but to the extent to which the competition in the neighbourhood proved that the rate can fairly and equitably be raised. If zemindars choose to neglect their estates and not to put in force the power of enhancing the rents of new

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ryots which they possess, it is possible that they may find difficulty in procuring evidence as to their rights to enhancement; but I would allow them to suffer for their own neglect. My opinion, founded on long experience, is that zemindars, either English or Native, do neglect to enhance their rents whenever they can. It has been stated that English zemindars, engaged in the manufacture of indigo, do not trouble themselves in this matter of rents; but I have had some experience in inquiries on this subject, and I am convinced that they do not neglect this question of rents, so much as they suppose. They enhance with their neighbour, and they very often take the lead in enhancing.

10. The rule which the High Court up to this time has laid down for enhancing, under the value of produce clause in section 17 of the Act, is that the landlord is entitled to the whole extent of the increase in value of the produce, and that the ryot is entitled to no portion of it, unless he can give evidence to show that change of circumstances entitle him to some portion of the increase; and that under no circumstances he is entitled to more than the wages of labour, and the interest on the capital employed by him, and sufficient allowance for renewal of capital; that he is, in fact, entitled to no portion of the net profits of agriculture. The correctness of this ruling depends on the solution of the question whether the rents of ryots, without rights of occupancy, are determined on any such rule. It is to be recollected that we are in a country where waste land is to be found, and where agricultural labourers are constantly at a premium; competition therefore will not raise the rents to some extent to which it would raise them in a country where all the land was cultivated. The fact is proved by the result of the application of the ruling, as compared with the evidence taken on the case in which it was passed. The principle upon which the rate of rent was assessed by the High Court gave a result of one rupee per beegah. It is, however, a fact proved by evidence taken in that case, that there was not a single ryot, with or without rights of occupancy, in that part of the country, who paid so high a rate of rent. Some new ryot, with remarkably good land, did pay up to one rupee per beegah; but none paid beyond it, and very few even up to it. The ordinary rate was 9, 10 and 12 annas per beegah. This proves that ryots without rights of occupancy did obtain a share of the profits. Ryots with rights of occupancy are certainly entitled to as good terms as ryots without such rights, though they may be entitled to no better terms. But the application of the rule of the High Court led to the result that khoodkast ryots were to have none of the net profits from the land, though new ryots who held no rights of occupancy under the terms of their leases, whose rent has been raised to the highest point the law of competition, that is, of supply and demand prevailing in the neighbourhood, could raise them, were enjoying a very large share of those profits. This result, therefore, proves that the ruling laid down for ascertaining the extent the rent ought, under the principle of competition, to be raised did not succeed in arriving at that result. The ruling might have arrived at the proper result in England, though I have some doubts even on that point, but it led to erroneous results in this country, because the competition for land had not reached that extent to which the ruling would be fairly applicable.

11. Another proof of the incorrectness of this ruling is the fact that the landlords are unable to recover the rent which has thus been ascertained and decreed. They hold the rate *in terrorem* over the ryots, to force them to acquiesce in other demands which are in their nature speculative. But they dare not execute their decrees and dispossess the tenants, because they are fully aware that they will obtain no new tenants to take the place of the evicted tenants at the rates decreed. New tenants can obtain land at lower rates which yield them a share of the profits. They will not take land at the higher rents which yield them no profits. The law of competition does not force them to do so. It was a well-known fact, generally talked about in the Nuddea District, that certain landholders were anxious that Mr. Hill should obtain his decrees at the higher rate of rent, because the result would be that the ryots would desert his land, and migrate to their lands where they would get better terms. They were, however, disappointed in this anticipation, but only because Mr. Hill did not execute his decrees, and did not force his ryots to pay rents in accordance with them.

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12. It may be said, then, that, taking the above view of the question, it is unnecessary as the second ground of enhancement, *viz.*, the value of produce clause in section 17 of the Act. I do not, however, think it is redundant. This ground for enhancement may be applicable where data does not exist to ascertain what is a fair rate under the first ground, in all cases where there has not been negligence on the part of the zemindar. When he has neglected to put in force the natural law of competition, he might still ask for an enquiry under the second clause. But he cannot, on account of his neglect, expect that the Courts will subvert the whole of the agreement under which he originally leased the land to his tenant. The Court should retain, as far as possible, that original agreement in force, and only award the landlord increase in proportion to the increase in the value of produce which is proved. What share of profits did the ryot receive when the agreement was entered into, that share of profits he would still receive under the change of circumstances. The landlord is not entitled to break his original contract with his ryots, because the value of the land has somewhat increased. If it could be shown that, under the original contract, the ryot had no share in the profits, then I would admit that, under the new state of circumstances, he would be entitled to no share, but it would be impossible to prove this. Rents are not settled on the definition laid down by Malthus, but on the law of supply and demand. The questions of wages of labour, profit on stock, interest and insurance, are not taken into consideration on such occasions. The ryot is not told that he is entitled to nothing but his wages. It may be that a very high state of competition may reduce him to the point of being only a labourer; but it cannot be that mere competition admittedly does not exist, or exists only to a limited extent: we are to presume that the ryot has fallen to a mere labourer. If the landlord wishes to put in force his rights under the principle of competition, let him apply to the Courts under the first clause of section 17. If he cannot do this, but can only claim enhancement because the land or its crop has increased in value, he cannot complain if the increase of rent he obtains on this account is proportionate to the ground on which he demands it.

13. In my opinion, therefore, there exists no necessity for an alteration in section 17 of the Act, unless such alteration is made for the purpose of more clearly laying down that, under the second clause, the enhancement shall be in proportion to the extent of increase in the value of the land.

14. I have already, in a former report upon this law, recommended that the 13th section requiring the issue of notices as a preliminary to enhancement through the Courts should be abolished. I still entertain this opinion. If a landlord and his tenant cannot agree among themselves as to what will be a fair enhanced rate of rent for the future, they will settle it among themselves. If they cannot agree, and if the ryot holds the right of occupancy and cannot be ejected, or if even with a ryot who holds no such right, the landlord does not wish to eject, and it is, therefore, necessary to submit to the Courts the question of what is a fair and equitable rate of rent for the ryot, such a suit can be preferred by the landlord. The notice in the suit is sufficient notice of the claim, and I cannot see the advantage of any additional notice. I am aware that it has always been the custom of the country to serve such notices, and that the old law as well as Act X has proceeded on the principle that such notice is a sufficient ground of action; and that, if the rent demanded in the notice is subsequently declared to be a fair and proper rent, the tenant is liable to that rent from the year following that on which he received his notice. There have been instances under the old laws, in which a notice has been served, and no suit for enhanced rate mentioned in the notice has been brought until eleven years have elapsed; a suit was then brought and the tenant has been declared liable to back-rents at the higher rate for those eleven years. It was considered that such a notice gave a cause of action which could be brought into Court any time within twelve years. The new law required the notice to be served through the Collector, and the landlord to bring his suit for enhanced rents within fifteen months of the date on which he claimed such enhanced rent, and allowed the ryot to contest the claim either on receipt of the notice by bringing a suit himself, or in answer to the claim of the landlord when instituted in the shape of a claim for arrears of rent. The result of this is that there have been notices of claims for rent at enhanced rates served against thousands of ryots; and as no suit

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was brought until the last five days within the fifteen months prescribed by the law, those ryots remained in utter ignorance of the rent under which they held their lands, not only for those fifteen months, but for the two or three years during which those suits were pending in the litigation which ensued. Under the law as it now stands, the decrees which were ultimately passed in those suits, awarded the enhanced rent from the year which commenced after service of notice. But it is surely an extreme hardship upon ryots to leave them in this manner in ignorance of their rents for many years. The remedy I would propose is to do away with the notice, to allow the notice of the claim in the suit to be the real notice, and to declare that all decrees for enhanced rates of rent shall have prospective effect from the year following that in which the decree is passed; and shall in no instance have retrospective effect.

15. A ryot is not allowed to serve notice of his claim for abatement of rent, and to delay his suit for abatement until future years. I see no reason for any difference in dealing with the two classes. I would declare that the decrees in each instance shall be prospective.

16. One argument used against this proposition is that the ryot is at liberty to sue for a determination of the rate of rent to which he is liable under the notice as soon as he likes. He is not obliged to wait for the suit of the landlord. He is the proper person to go to the expense of bringing of the suits. It is unfair to require the ryot to undergo that expense or remain in suspense as to his rent for a year, or it may be two or three years.

17. If, however, the present law as to notice of enhanced rent is to be retained, the Act should require that it should be observed at least six months before the commencement of the year in which the landlord claims to receive that rent.

18. I approve of the provisions of section 19 of the Act, allowing ryots to serve notice of relinquishment of their lands through the Collector. But in this instance also, I would alter the law so as to require such notice to be served at least four months before the expiry of the year. The delay to serve all these notices until the last month of the year causes immense vexation and inconvenience to all parties. A Collector has such numerous requisitions made upon him, at one and at the same time, that he is actually unable to comply with them, and the result is that the notices are not served.

19. It is a question whether a landlord should, in a similar manner, be required to serve notices of ejectment prior to instituting proceedings under section 25 of the Act. As a general rule, the landlord's claim to eject, if decreed, obtains force only from the commencement of the year following that on which the decree is passed. This is very proper; but should not the landlord be allowed to issue notice of ejectment, and required, if the ryot opposes his claim to eject, to institute his suit within one month of the commencement of the year? The only advantage of issuing notice through the Collector is the guarantee thus afforded that the notice has been served, and that the party on whom it is served is thereby aware that such a claim has been made. As no decree for ejectment would have immediate effect unless a notice was served, I would add a section to the Act allowing such notice to be served through the Collector at least six months before the expiry of the year; and requiring that proceedings on the notice, when the claim to eject is opposed, shall be instituted within the first month of the new year; the order of the Collector passed under the section to be not open to appeal, but subject to further contest in a suit in the Civil Courts.

20. The next division of Act X contains, what are called, the jurisdiction clauses. There is, I believe, a very strong opinion that the jurisdiction of which the Civil Courts were deprived by this Act should be restored. But I see no objection to leaving with Collectors the original jurisdiction in all matters connected with rents, and connected with summary proceedings for ejectment, registry, &c. I would, however, as regards the former description of suits, vest the Judges alone with authority to hear appeals; and with regard to the latter, declare the order of the Collector not appealable, but subject to a suit in the Civil Court. To effect this, it would be necessary to remove clauses 5 and 6, section 23, from that section, and place such suits in the same category as sections 25 to 27.

21. At present there is a divided appellate jurisdiction as regards certain suits; for instance, suits for arrears of rent. The result is, as has fallen under my personal observation, that when a landlord brings such suits against 50 or 60 of his ryots, and the issues raised on these suits are identical, one-half of them may be decided one way by the Collector, and the other half in another way by the Judge, according as the amounts claimed are below or above Rs. 100. The Collector's decision, however contrary to law, is final, whereas that of the Judge is open to special appeal. I would give the appellate jurisdiction in all cases to the Judge, and thus ensure a correct administration of the law, and put an end to differing findings on issue of fact. This would also remove the great difficulty, which is at present experienced by suitors, in ascertaining to what Courts appeals lie, more especially under the concluding clauses of section 153 of the Act, where some "interest in land as between parties having conflicting claims thereto has been determined." These words are so vague that there have been constant contradictory decisions as to the correct interpretation to be put upon them even by the High Court.

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22. I think also that there is a necessity for some change in the wording of clause 6, section 23 of the Act. This clause gives Collectors jurisdiction over all cases of dispossession by landlords of ryots. It would be better to confine this jurisdiction to cases when the zemindar has illegally exercised his right under section 21 of the Act. The result will then be that jurisdiction of the Collector will be confined under clauses 5 and 6 solely to the question of summary dispossession, and that the jurisdiction of the Civil Courts in all questions of disputed title will still remain.

23. With regard to sections 25, 26, 27 and 28, it has been ruled that appeals under the first three sections lie to the Commissioner, and under the last section to the Judge; and it may be that the wording of this last section bears out this interpretation. I would, however, in all these sections, make the decision of the Collector final, until reserved in a suit brought in the Civil Courts. The Collector would then have authority to exercise a summary power in all such cases, and the investigation of the really important question of title would, as ought to be the case, still remain in the Civil Courts. The procedure sections of the Act are, in my opinion, admirable. It is a question whether on all points of procedure on which Act X is silent, the provisions of Act VIII of 1859 should be applicable, more especially as respects reference to arbitration. I would not, however, introduce any except the sections on arbitration, and I think that even on this rules for reference to arbitration should be laid down in some more simple style than those in force under Act VIII.

I have no alteration to recommend in the execution clauses of the Act or in those having reference to distress. The latter point is one upon the working of which Collectors will be able to give the best information. There only remains the appellate clauses of the Act, and upon these I have already recorded my opinion.

Minute by the Hon'ble Mr. Justice F. A. Glover *on Act X of 1859.*

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My objections to Act X of 1859 are confined to a part of section 17. With regard to section 6 I think (with great deference to the opinion of the learned Chief Justice) that no alteration should be made. It seems to me, after a careful perusal of all the minutes, &c., recorded at the framing of the permanent settlement, and of the Resolutions which that enactment has given rise to, that the ryot always had, from the earliest times of Hindu sovereignty, "a right of occupancy" on the land he cultivated so long as he paid the rent agreed on. These rights, so far as I can see, were never abolished by the great Mahomedan middlemen, who, as mere contractors for the revenue of their respective districts, had, in fact, no power of interference with the actual cultivator to the extent of removing him from his holding. The permanent settlement, whilst admitting as a principle that all ryots had rights, practically ignores all but those of mokururee tenants; and the consequence, till the passing of Act X, has been confessedly a vast amount of injustice and oppression. The rights of the zemindar and the power of Government to legislate hereafter for the benefit of the ryot, should such interference appear necessary, were given by the same

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Regulation; and after 70 years of almost irresponsible power, it is high time for the zemindar to admit the ryot to a share of the advantage which he himself has enjoyed so long. I think, therefore, that the right of occupancy now given by Act X to all ryots who have held uninterrupted possession of land for 12 years, is a just and proper recognition of privileges which the old laws of 1790 either overlooked or evaded.

And if it be admitted that the ryot has, and is to have, this right of occupancy, we must follow out the idea to its only legitimate conclusion, and make the right worth having. If the ryot is to have no legal protection, but is to be left, as suggested by the learned Chief Justice, to make his own arrangements with the zemindar, I do not see in what better position he is than the ryot without any right of occupancy at all; in both cases the measure of a "fair and equitable" rate will be the landlord's power to extort. It is very easy to argue this question on general principles of political economy, and to assert that no zemindar will oust a good tenant; that mutual interest will prevent undue exaction, &c., &c., but facts are not to be got over in this way, and experience shows us how, even before the right of occupancy existed, zemindars were never withheld by such considerations from getting the last available fraction out of their property; whilst now-a-days they have a further incentive to extortion, in the hope of driving the 12 years' ryot off the estate, and so getting rid of the right of occupancy altogether. In the present estate of circumstances, with land rising every day in value, no zemindar need be afraid of seeing his lands go out of cultivation for want of ryots.

It appears to me, therefore, that to leave the parties to themselves would be, to say the least of it, a useless measure; and that to give the right of occupancy any practical value, there must be some tribunal to which the zemindar and the ryot can apply for redress. I do not object to the principle of section 17, but to the way it is worked; it appears to me to be cumbersome in its provisions, and must always be the fruitful source of litigation, for a ryot who cannot be ejected is hardly likely to be of the same opinion as his landlord as to what is a "fair and equitable" rent. Such cases must be referred to some Court or other; but as the law stands at present, a solution of the difficulty seems hopeless; every objection regarding what is the rate of rent, quoad the kind of soil, the facilities of irrigation, and the rent paid by neighbours, will grow up into a huge "case;" and, when disposed of, may at any future time be re-opened by a change in the circumstances of the village to which the lands belong. A railway, a new line of road, a military cantonment, may make the land in their several vicinities more valuable, and alter the rates of an entire district.

The only remedy appears to me to be a general pergunnah rate estimated according to the particular circumstances of each village and fixed by authority for each portion of a district revisable at such times as circumstances might render necessary, but to be considered as fixed unalterable law during the time of its existence. There is no insuperable difficulty in the way of arranging such a rate, and the result would, I think, in the end, be satisfactory both to landlord and tenant. The one would get his dues without litigation, the other would be safe against extortion; each would know the extent of his own liabilities and take his measures accordingly.

The present system is very expensive and eminently unsatisfactory; it ends in a judgment in which no principle is decided.

It may, of course, be objected to this proposition that should prices rise during the intervals of revision otherwise than by the agency of the ryot, the profit would be all with the latter, and that the zemindar would be unfairly prejudiced. I do not see much force in this objection; for, after all, the operation of a pergunnah fixed rate for a term of years (and the length of this term would, of course, be determined by circumstances) would be the same as a lease for the same term of years; a ryot with right of occupancy and a pottah at a certain rent could not have his rent increased till the lease expired, however great the rise in prices, whilst the pergunnah-rate would be revisable at any time on sufficient cause shown.

The arrangement would involve trouble no doubt, but without some such settlement, I do not see how we are to avoid a never-ending litigation. If the tenants' right of occupancy is to be any thing more than a myth and delusion, it must be supplemented by an established system of rates, from which neither

landlord nor tenant can appeal. Anything is better than the present state of uncertainty, and how the uncertainty is to be diminished by the action of a hundred different Courts, which may each hold different views of the proportion of produce claimable by landlord or tenant, respectively, I for one cannot discern. If there be no fixed rule on the subject, the matter will end in confusion more confounded. *Tot homines quot sententiæ.*

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The 3rd clause of section 17 should, of course, remain intact; the 1st and 2nd should, in my judgment, be amended.

No. 3010, dated 21st September 1864.

From—F. B. PEACOCK, Esq., *Officiating Registrar of the High Court of Judicature at Fort William in Bengal,*

To—*The Secretary to the Government of India,* HOME DEPARTMENT.

Letter from F. B. Peacock, Esq., Officiating Registrar, High Court, to the Home Department, No. 3010, dated the 21st September 1864.

No. 16.

IN continuation of my letter No. 2897, dated the 14th instant, I have the honour, by direction of the Court, to forward herewith, a copy of a Minute recorded by Mr. Justice Loch on Act X of 1859.

Minute by the HON'BLE G. LOCH, *on Act X of 1859.*

Minute by the Honourable Mr. Justice G. Loch.

No. 17.

WITH reference to the letter from the Government of India of the 12th October last, on the subject of Act X of 1859, I note down the accompanying observations, at the same time regretting that, from having seen so little of the actual working of the Act, I am unable to offer but the simplest suggestions. One of my colleagues, Mr. Justice E. Jackson, has had much experience as a Special Commissioner in some of the districts of Bengal, and I have no doubt that he has given full and useful information on the subject.

Some of the provisions of Act X of 1859 have given the ryots privileges and rights which they did not enjoy before the passing of the Act. It is a question whether the Legislature intended some of these provisions to be retrospective, but the public have apparently accepted the law as having a retrospective, as well as prospective, effect.

Under the provisions of clause 1 (Act VII), section 8 of Regulation I, 1793, the Government reserved to itself the power to legislate for the protection and welfare of all classes of under-tenants and ryots, and under Act X of 1859 they have obtained rights which they never enjoyed before. By the power reserved in Regulation I, 1793, the Government have now created a tenant's right, and it is questionable whether it is politic to withdraw or modify that right after it has been accepted and enjoyed by the tenantry for some years. The question whether the provisions of section 6 of Act X of 1859 are retrospective, has never been determined by the High Court; but the community at large and the Lower Courts have, I apprehend, considered them as such, and acted upon them accordingly.

The position held by the under-tenants and ryots of an estate up to the passing of Act X of 1859, may be gathered very clearly from the sale laws from 1793 downwards. By section 5, Regulation XLIV of 1793, we see the effect of a sale for arrears of revenue, and the principle there laid down has been steadily kept in view in all subsequent legislation. It noted that all engagements which the proprietor had contracted with dependent talukdars whose taluks were situated in the estate sold, as also all leases to under-farmers and pottahs to ryots, were considered to be cancelled from the day of sale. I quote the words of section 3, Regulation XI of 1822, for they are very precise:—

"In pursuance of the principle of holding the estate of a defaulter answerable for the punctual realisation of the Government revenue in the state in which it stood at the time the settlement was concluded (at which time, by the dissolution of its previous engagements, Government must be considered to resume all rights possessed on the acquisition of the country, save where otherwise specially provided), all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with the ryots or like settled, or credited by the first engagers or his representatives, subsequently to the settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, shall be liable to be avoided and annulled by the purchaser of the estate at the sale for arrears due

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on account of it, subject only to such conditions of renewal as attached to the tenure at the time of settlement aforesaid, saving always and except *bonâ fide* leases of ground for the erection of dwelling-houses or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force or effect."

No words can, I think, more clearly express the position of the tenantry, whether under-tenants or ryots, than the above. They show that, as against the auction-purchaser, no engagement entered into with the former proprietor subsequent to the permanent settlement was of any binding force, and that the purchaser could at pleasure eject the tenant of whatever description.

There were, however, certain classes of under-tenants who were protected against the auction-purchaser. These he could not dispossess, nor enhance their rents, except under certain circumstances. These classes are described in section 32 of the same Regulation, and I quote it:—

"The above rules or any other rules contained in the existing Regulations, by which persons are declared competent, under certain restrictions, to annul engagements contracted between former proprietors and their under-tenants, and in certain cases to enhance the rents payable by such tenants, shall not be construed to entitle the purchasers of land at public sales *to disturb the possession* of any village zemindar, puttidar, mofussil talukdar, or other persons having an hereditary transferable property in the land, or in the rents thereof not being one of the proprietors' party to the engagement of settlement or his representative. Nor shall the said rule be construed to authorise any purchaser as aforesaid to *eject a khoodkhast kuddeemee ryot, or resident and hereditary cultivator having a prospective right of occupancy.* Nor shall a purchaser demand a higher rate of rent from an under-tenant of either of the above description than was receivable by the former malgoozar, saving and except in cases in which such under-tenants may have held those lands under engagements stipulating for a lower rate of rent than would have been justly demandable for the land in consequence of abatements having been granted by the former malgoozars from the established rates by special favour, or for considerations, or the like; or in any cases in which it may be proved that according to the custom of the pergunnah, mouzah or other local division, such under-tenants are liable to be called upon for any new assessment or other demand not interdicted by the Regulations of Government."

We have here two classes of tenants whose possession could not be disturbed by the auction-purchaser—the first called the village zemindar, &c., having an hereditary transferable property in the land or in the rents thereof; and secondly, the khoodkhast kuddeemee ryot, or, as these words are translated for us, the resident or hereditary cultivator having a prescriptive right of occupancy. We need at present turn our attention only to this second class. Who were these khoodkhast kudeemee ryots? They are evidently ryots who were on the estate cultivating the lands of the village in which they resided at the time of the decennial settlement. They are not ryots whose engagements date from a period *after* that settlement, who were settled by the first engager or his representative subsequently to the settlement, for such tenures were liable to be cancelled by the auction-purchaser. They were the ryots holding and cultivating lands in the village in which they resided at the time of the settlement of the estates, and as such, they, and *they alone, are ryots who have a prescriptive right of occupancy.* All other ryots subsequently settled, though now residing in the village and cultivating lands of that village, though entitled to be called khoodkhast from that circumstance, are not kudeemee, and are either tenants-at-will, or tenants for a term according as they hold their lands in lease or otherwise. We may, I think, look through the length and breadth of the Regulation, and we shall find nothing that declares a ryot settled on an estate *subsequent* to the decennial settlement to be other than a tenant-at-will, nothing that recognises in such a ryot any prescriptive right of occupancy. The only steps taken by the Legislature to protect the ryot were to enact that the ryot should be entitled to receive a pottah for the lands held by him, and that these lands should not be assessed beyond the pergunnah-rates.

It may be asked what were these pergunnah-rates? How were they ascertained? Were they susceptible of no increase, or do they continue the same as they were at the time of the decennial settlement? There can be no doubt, from the frequent use of the word pergunnah-rates, that the term was well known at the time the settlement was made. Where there is no great competition for land, similar rules for similar kinds of land will prevail over large tracts of country for lands growing a staple, such as rice. Special crops,

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such as sugarcane, tobacco, chillies, &c., were assessed less with reference to the quality of the lands, &c., than to the value of the crop and the profit likely to accrue to the cultivator; but even these bore a rate well known in the neighbourhood, and well recognised as pergunnah-rates. No doubt these rates might gradually rise. Time, improved communication, better markets, would have an effect upon them; and so early as Regulation V, 1812, we find it thus stated in section 5:—There being reason to believe that the pergunnah-rates are, in many instances, become very uncertain, the following rule shall be observed; and then it provides in section 6 that where pergunnah-rates exist they shall be adopted, and where they are not established, pottahs should be granted at the rate payable for land of a similar description in places adjacent.

Recent legislation has in some measure altered the position of the ryot for the worse; for Act XII of 1841, Act I of 1845, and Act XI of 1849, authorise the auction-purchaser to enhance the rates at discretion, but the Courts have held that such enhancement must be reasonable and such as the lands will bear, and not an arbitrary and excessive demand. These subsequent enactments did not in any degree alter the principle laid down in Regulation XI, 1822. They preserved that principle intact, and declared that the auction-purchaser should acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, with power to enhance, or eject, except in particular cases. Among the exceptions set forth in Act XII of 1841 and Act I of 1845 are lands held by khoodkhast or kudeemee ryots, having rights of occupancy at fixed rents, or at rents assessable according to fixed rules under the Regulations in force. It is difficult to understand why the word "or" has been made use of. The Legislature could not have supposed that khoodkhast and kudeemee were convertible terms. The introduction of the word "or" alters the meaning of the term. A ryot settled in a village and cultivating lands of that village is a khoodkhast ryot, though he may not have held the lands for a couple of years; but he is not kudeemee, unless he or his predecessors held them at the decennial settlement. If the word "or" be used as a disjunctive, then any ryot living in the village and cultivating lands appertaining thereto might set up his back against the auction-purchaser. That, however, the word is not used in this sense, is evident from the context.

It might, perhaps, be argued that though, as against the auction-purchaser, no claim of prescription would hold good, yet as against the original proprietor his successor's long occupancy at a uniform rate of rent gives the ryot a prescriptive title both in regard to occupancy and rent. Now it is clear that the ryots at the time of the decennial settlement were considered, except the khoodkhast kudeemee-holder, to be tenants-at-will, and this can be gathered from the laws which required zemindars to furnish pottahs to their ryots, but restricted the term to ten years at a time. Section 2, Regulation XLIV, 1793, declares that no zemindars shall grant a pottah to a ryot or other person for the cultivation of lands for a term exceeding ten years, and it prohibits a removal of such pottah till the term of the existing lease have reached its last year, when a pottah on the same or any other terms for a further period not exceeding ten years might be given. Section 2, Regulation V, 1812, altered this, and put no limit to the period of a lease. But it is evident from both these statutes that where a ryot was not protected by a lease, he was nothing but a tenant-at-will. Regulation VIII, 1793, sections 54 to 61, contain rules for the preparation and delivery of the pottah to the ryots, and section 59 declares that when the rent has been ascertained and settled a ryot may demand a pottah from the actual proprietor of land, &c. Section V, Regulation IV, 1794, prescribes what is necessary to constitute a tender of a pottah, and section 7 of the same Regulation lays down the rule for determining the rates at which pottahs, which may expire, or become cancelled under the provisions of Regulation XLIV of 1793, shall be renewed. It is declared that no proprietor or farmer of land or any other person, shall require ryots whose pottahs may expire or become cancelled under the last-mentioned Regulation to take out new pottahs at higher rates than the established rates of the pergunnah for lands of the same quality and description, but that ryots shall be entitled to have such pottahs renewed at the established rates upon making an application for that purpose to the person by whom their pottahs are to be granted in the same manner as they are entitled to demand pottahs, in the first instance, by Regu-

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lation VIII, 1793. The above Regulation prescribes the rates at which the ryots are to receive their pottahs, but gives them no prescriptive right of occupancy against the landlord, whether auction purchaser or not, and what was the case in 1793, was the case till the passing of Act X of 1859.

In section 60, Regulation VIII, 1793, we find a distinction drawn between the khoodkhast and other ryots, and are able from the slight mention made of them in that place to determine who the real khoodkhast ryots were. Clause 1 of the above section prescribes that all leases to under-farmers and ryots made previous to the conclusion of the settlement are to remain in force until the period of their expiration, unless proved to have been obtained by collusion or from persons not authorised to grant them. But with regard to khoodkhast ryots it was declared in clause 2 that no proprietor of land or farmer should cancel the pottahs of the khoodkhast ryots except upon proof that they have been obtained by collusion, or that the rents paid by them within the last three years have been reduced below the rates of the nirik-bundi of the pergunnah, or that they have obtained collusive deductions; or upon a general measurement of the pergunnah for the purpose of equalising and correcting the assessment. The ryots mentioned in the first clause are evidently pyekhast ryots living in our village, but cultivating land under a pottah in another; while the khoodkhast ryots, whose pottah could not be cancelled, except under certain circumstances, is the ryot living in the village and cultivating the lands thereof. Both these classes of ryots, however, are, from the context, supposed to have entered into their engagements *previous to the* settlement, and therefore the provisions of the 2nd clause of this section cannot apply to khoodkhast ryots settled in the village by the zemindar after the settlement.

But that I be not further wearisome, I may briefly sum up this part of the subject in a few words. From the earlier Regulations of Government it may be gathered that, at the time of the decennial permanent settlement, there were two classes of ryots—the one living in and cultivating the lands of the village, who were supposed to hold pottahs from the zemindars, which pottahs could not be cancelled, except under peculiar conditions. These had a right of occupancy at fixed rates, and are described in Regulation XI of 1822, as the khoodkhast kudeemee ryots, the resident and hereditary cultivator having a prescriptive right of occupancy; or in the subsequent sale laws as the khoodkhast or kudeemee ryot, having rights of occupancy at fixed rents or at rents assessable according to fixed rules under the Regulation in force; the second class comprised the pyekhast ryot living in one village and cultivating the lands of another. He was a tenant-at-will, or for a time, according as he carried on his cultivation with or without a written lease. About the period of, but subsequent to, the settlement with the proprietor, another class of khoodkhast ryots was settled or credited by the proprietor, and it was apparently for such ryots, as well as the pyekhast ryots, that the various rules for granting and limiting the terms and regulating the rates of pottahs were enacted, for the old khoodkhast ryots held or were supposed to hold pottahs which could not be cancelled, and these rules consequently could not apply to them. Now it is to the latter khoodkhast and to the pyekhast ryots that Act X of 1859 has, under section 6, extended the privilege of a prescriptive right of occupancy—a right which they never enjoyed at any previous time; and it further enables them by pleading payment of a uniform rate of rent from the decennial settlement, and proving such payment for twenty years, to set up a claim of holding at fixed rates, putting the burden of disproving such allegation upon the zemindar.

Having noted what I believe to have been the condition of the ryots before the passing of Act X of 1859, I may be allowed to make a few remarks on the policy which created a right never looked for by the ryot. That the ryot was liable to suffer from extortion in the absence of a pottah or known fixed rates is very probable, but that he was likely to be evicted from the land was very improbable, except under peculiar circumstances. The population is not so dense, nor the demand for land so great, as to allow of a zemindar for rack-renting his tenantry or holding it as a matter of indifference whether a ryot remained in his estate or not. If the demand for land was very great, the temptation to oust a tenant or to raise his rent exorbitantly might exist; but under ordinary circumstances, there is little fear of this. But even had circumstances rendered it advisable to protect the interest of the ryots by

such an Act, its operation should distinctly have had a prospective effect, so as to enable the proprietors to protect their own interests by granting leases to their tenants, and so preventing the latter from taking advantage of a law which makes them almost independent of the landlord, and prevents his deriving that benefit from the productive powers of his estate which he otherwise might do, and which was supposed to be secured to him at the permanent settlement. Now, I must confess that I see no sufficient reason why a zemindar should not derive benefit from the improved condition of his estate, even if its productive powers have been increased by the labour and at the expense of the cultivator, provided the cultivator obtain his share of the profit, and the proportionate advantage to be drawn by either party is, I imagine, more easily and satisfactorily settled by the parties themselves than by any rules laid down by legislative interference. But the effect of the law, as it now stands, may be to deprive a zemindar of all increased profits under almost any circumstances, for, if a tenant having a right of occupancy plead a uniform payment of rent from a permanent settlement, and prove continuous payment of that sum for a period of 20 years, he raises a presumption so strong that it is very difficult for the zemindar to rebut it; and, under such circumstances, whether the value of land be increased by rise of prices or improved communications, or other circumstances, irrespective of the exertion of the tenant, the zemindar can derive no benefit therefrom.

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The case may be thus stated: If a ryot hold or cultivate land for 12 years, he acquires a right of occupancy, unless restrained by the express terms of his engagements. Having a right of occupancy, if he can prove payment of a uniform rate of rent for 20 years, it is presumed that he has paid a fixed rate from the permanent settlement. If he have held at fixed rates from the permanent settlement, he is entitled to a pottah at these rates, so that a tenant-at-will may obtain all the advantages of a khoodkhast kudeemee. Then as to enhancement: having acquired a right of occupancy, the ryot pleads payment of rent at a fixed rate, and proves such payment for 20 years. If the zemindar cannot rebut the presumption, he cannot enhance, although the value of the produce or the productive powers of the land have been increased by means independent of the ryots. Indeed, the zemindar could, under such circumstances, take no advantage of his own expenditure. He might spend large sums in drainage, which might materially affect the ryot's holding for the better; but the rates at which the latter holds would not be open to enhancement. He has paid for 20 years at one rate. It is presumed that he has paid at the same rate since the permanent settlement. The zemindar's expenditure has enabled the ryot to improve his cultivation 50 per cent., but the zemindar can get no advantage from it. On the other hand, if the ryot's holding is injured by the acts of the zemindar, the ryot can get an abatement of rent at any time. It is a pity that the Legislature interfered at all, for these questions are more satisfactorily settled by the parties themselves. Sections 17 and 18 have opened a fruitful source of litigation, and raised questions which are most difficult for the Courts to settle, but which are easily determined without intricate calculation by the parties when left to their own sense of mutual advantage. They would probably make the rate payable in the vicinity the standard of enhanced demand, except where there was some special disturbing element, and the parties came into Court; and then the same standard might be applied by the Court.

I beg to add a few remarks on one or two other sections of the law. Compare sections 5 and 8. If ryots having a right of occupancy are to be treated fairly and equitably, why should other ryots be put under the power of the screw. Read the two passages together, and what is the conclusion? Ryots mentioned in section 5 are to have fair and equitable rates. Those referred to in section 8 must pay what? Whatever you can get out of them? The amount used formerly to be limited to the pergunnah-rate. It is now elastic as a man's conscience.

Section 19 is almost the converse of section 13; but why is the action of section 19 confined to *ryots*, and not extended to *under-tenants*? Who are the under-tenants referred to in sections 13, 14 and 26? They are clearly distinguishable from the ryot, but if they are subject, under section 13, to have their rent enhanced after service of notice as an ordinary ryot, why should

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they not have the privilege of throwing up their lands under section 19 as is enjoyed by the ryots.

It may be as well to declare more clearly the object of section 28. Is it intended to make the Collector's Court of concurrent jurisdiction with the Civil Court, or one of sole jurisdiction for the classes of cases referred to therein? The question has been much discussed. I am of opinion that the Collector's Court is intended to be the only power for disposing of all questions of assessment and eviction between landlord and tenant. Parties holding lands under section 10 of Regulation XIX, 1793, can only be looked upon as tenants liable to pay rent for use and occupancy.

In conclusion I add these few words, that I think it would not be expedient to rescind section 6, as likely to cause much dissatisfaction among the tenantry who have, I doubt not in Lower Bengal, fully appreciated and taken advantage of the privilege accorded to them by that section of the law. I would repeal sections 17 and 18, and leave all questions of enhancement, when brought before the Courts, to be determined by local investigation; the rates to be fixed according to those prevalent in the vicinity. This would be a sufficient protection for the ryot, and would yield the zemindar a fair return for his land, whether in, or removed from, the neighbourhood of large towns, and a very expensive and unsatisfactory litigation be saved in each case. I deprecate any further legislation on the subject at present. The minds of men have become unsettled. Old rules, old customs, old rights have been swept away, and a new order of things introduced, which has taken a strong hold of the popular mind. Any further law-making at present will only add to the present confusion and prevent matters settling down.

Letter from F. B. Peacock, Esq., Officiating Registrar, High Court, to Home Department, No. 3241, dated the 22nd November 1864.

No. 18.

No. 3241, dated the 22nd November 1864.

From—F. B. Peacock, Esq., *Offg. Registrar of the High Court of Judicature at Fort William in Bengal,*

To—*The Officiating Secretary to the Government of India,* Home Dept.

In continuation of my letter No. 3010, dated 21st September last, I am directed to forward herewith, for the purpose of being laid before His Excellency the Governor General in Council, a copy of a Minute recorded by Mr. Justice Trevor on Act X of 1859.

Minute by the Honourable Mr. Justice C. B. Trevor, dated the 5th November 1864.

No. 19.

Minute by the Hon'ble C. B. Trevor, *dated the 5th November 1864.*

The Government of India, with reference to certain observations made by the Judges who decided the Rent Case of James Hill *versus* Isher Chunder Ghose, has requested that the Court will state its opinion on the points on which Act X of 1859 requires amendment, and give a full explanation of the difficulties which are described as arising from certain of its provisions.

2. The observations alluded to, made by the learned Chief Justice Sir Barnes Peacock, and Mr. Justice Sumbhoonath Pundit, in their Judgments of the 2nd September 1863, were to the following effect:—

"It is not for us in this place to comment upon the Act of the Legislature, or to suggest amendments of the law; we have merely to administer it as we have found it, but we think that we may fairly point to this case as an example of the difficulties which have been created by some of the provisions of Act X of 1859, and of the vast amount of litigation harassing both to landowner and ryot, which must necessarily arise unless the Act be amended."

3. The case before the Court, when these observations were made, seems to have been one in which the plaintiff as dur-putneedar sought to recover rent from a tenant, whose right of occupancy under section 6, Act X of 1859, was admitted at an enhanced rate, on the ground that the value of the produce had increased otherwise than by the agency, or at the expense of, the ryots—clause 3, section 17, Act X of 1859.

4. The Lower Appellate Court, that of the Judge of Nuddea, found in the first instance that the value of the produce of the land had exactly doubled; *he therefore declared the plaintiff entitled to double the rent that the land* formerly bore. In special appeal preferred by the dur-putneedar, this Court

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ruled that the Judge had erred in introducing the principle of proportion; that Act X of 1859 does not say that the increased rent shall bear the same proportion to the original rent, as the increased value does to the original value, but merely that the rent shall be fair and equitable to both parties. That, for the purpose of ascertaining this point under section 6 of Act X of 1859, the Judge having first found the increased value of the produce, must then calculate the exact portion of that increased value to which the tenant is entitled as a return for the wages of labour and the profit of stock, and decree to the zemindar the remainder as his legitimate rent.

5. The case having been remitted for the purpose of these enquiries, the Judge entered in certain very elaborate and detailed calculations, which resulted in his fixing the ryot's rent at 10 annas per beegah. On special appeal these calculations were reviewed and the rent re-settled at one rupee per beegah.

6. On a petition of review being presented to the Court, the counsel for the defendant below—to use the language of Sir Barnes Peacock—proceeded, in an elaborate argument, to consider what were the status and rights of ryots before the permanent settlement and afterwards. Such argument could avail nothing on the pleading in the case before the Court, and the special appeal for review was rejected.

7. The particular points arising out of the case before the Court, to which the learned Chief Justice and Mr. Justice Sumbhoonath Pundit allude in their observations which have been cited above, would seem to be the new status which has been assigned to ryots, under section 6 of Act X of 1859, who have occupied their lands for 12 years, and the elaborate enquiries which are requisite for determining, under the joint action of sections 5 and 17 of the same Act, the enhanced rents which ryots should pay to their zemindars.

8. For the purpose of determining the exact effect of section 6 of Act X of 1859, it will be necessary to state what was the status of ryots generally before the decennial settlement; what change, if any, was then effected in their position with reference to the land; and what subsequent variations it has undergone. To go back to Hindu and Mahomedan times would be unnecessary, and attended with no practical good; but the opinion of Lord William Bentinck, given in a Minute of his dated 26th September 1832, may be cited as containing what probably was the real state of things:—

"I feel quite satisfied," remarks His Lordship, after maturely reflecting on this branch of the subject "that the putneedaree is the original and natural tenure of all lands in the country,—the only proprietors, however, being the ryots (which term comprises the whole agricultural community), and that the zemindaree or talukdaree tenure is adventitious and artificial, being, generally speaking, a creation of the Moghul Government; and the talukdar or zemindar (I am not speaking of the village zemindar or malik) himself being originally neither more nor less than a contractor with Government for its revenue. These people in the permanent-settled provinces have been declared by law to be the proprietors of the soil; and it has been argued by the opponents of the permanent settlement that, by this recognition, all the rights of the real proprietary classes of the country were destroyed; but there is reason to believe that, in Bengal at least, all that constitutes the value of such rights had been obliterated long before the introduction of that measure: and though, perhaps, it may have been practicable, and more consistent with equity, to assign to a different class the advantages arising out of a limitation of the Government demand, it can hardly be contended that the agricultural community were placed by that act on a more firm footing subsequently, than previously, by the formation of the perpetual settlement. The worst effect fairly imputable to the measure as regards that body, is, that it may have rendered more difficult the restoration of any rights which might at one time have belonged to them."

9. However diminished these rights may have become, there can be little doubt that, at the time of the decennial settlement, the ryots of Bengal and Behar were divided into two classes,—the khoodkhast or resident hereditary ryots, with an interest in the produce of the soil over and above the mere wages of labour and the profit of stock, and with a right of occupancy, so long as they paid the rents to which their lands, according to the custom of the country, might be liable; and the pyekhast or non-resident cultivators who had no rights beyond those which their temporary engagements with their superior holder may have given them.

10. At the decennial settlement, the zemindars and independent talukdars, with whom the settlement was made, became the actual proprietors of the soil,* and the dependent

* Sections 4 and 5, Regulation VIII of 1793.

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talukdars, or immediate holders between the parties to the settlement and the ryots, were considered as lease-holders,* usufructuaries without any right of ownership. With these latter I have no direct concern at present, but it may be stated generally that subsequent legislation as to their rights has followed a very similar course with that which it has followed in the case of the ryots.

* Section 7, Regulation VIII of 1793.

11. Every zemindaree was then hypothecated to Government for the revenue assessed upon it, and by an Act of the Legislature, they became at the end of the year liable to sale for the arrears of Government revenue. No zemindar or independent talukdar could, under the laws of 1793, enter into engagements or create leases beyond the term of ten years, and on the sale of an estate the purchaser acquired the property in exactly the same state as it was at the settlement, and all the engagements of the defaulting proprietor stood cancelled from the day of sale with two exceptions†.

† Sections 5, 7 and 8, Regulation XLIV of 1793.

12. Ryots, khoodkhast kudeemee, who at the settlement had been in possession of their lands for more than 12 years‡ before the settlement were, under no circumstances, not even on a sale for arrears, liable either to enhancement of rent or eviction from their holdings, so long as they paid rents which they had all along paid.

‡ Under both Hindoo and Mahomedan Law, a lapse of 12 years, forming occasion of a cause of action, barred the remedy (Colebrooke's Digest, Volume III, page 4).

13. The existing leases of khoodkhast ryots in possession at the time of the settlement, but whose possession did not run back 12 years, were, with certain exceptions, specified in section 60 of Regulation VIII of 1793 to remain in force until the period of their expiration, and those ryots were entitled to renewal of their leases at pergunnah-rates,§ and, on a sale for arrears of revenue, could be evicted only after declining to enter into engagements with the purchaser at the same rates‖.

§ Section 7, Regulation IV of 1794.

‖ Clause 5, section 29, Regulation VII of 1799.

14. The engagements of khoodkhast ryots, whose rights commenced subsequently to the settlement, were, in the event of a sale for arrears of revenue, liable to be cancelled; and on their declining to renew them on the terms which the purchaser was authorised to require, *viz.*, at the pergunnah-rates, they could then, and not before, be evicted. Pyekhast ryots are nowhere mentioned in the laws; they had originally no rights independent of the particular engagement under which they held, and that being cancelled, they were liable to immediate eviction.

Section 5, Regulation XLIV of 1793.
Section 7, Regulation IV of 1794.
Clause 5, Section 29, Regulation VII of 1799.

15. Things remained in this state until the enactment of Regulation XI of 1822. Three years previously, however, a proviso appeared in section 3, Regulation VIII of 1819, which requires notice; that section legalises all leases and engagements, fixing rents in perpetuity, or for a term of years beyond 10 in number, though executed whilst section 2, Regulation XLIV of 1793 was in force, and then follows the proviso—

"That nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to Government from the liability to be cancelled on the sale of the said estate for arrears of the said revenue under the rule of section 5, Regulation XLIV of 1793, unless specifically exempted from such liability by the rule in question, or by any other specific rule of the Regulation in force."

16. By this proviso it will be observed that the tenures themselves, using that term in a large sense, include every holding of every sort of under-tenant, whether intermediate between the zemindar or ryot or otherwise, are considered liable to be cancelled on a sale for arrears of revenue; whereas, in fact, the particular engagements only under the old law are liable to be cancelled, and the tenants are entitled to hold their tenures subject to a renewal at the rate fixed by the custom of the country.

17. In Regulation XI of 1822, which rescinded many sections of previous laws, and, amongst others, clause 5, section 29, Regulation VII of 1799, the wording of section 2, Regulation VIII of 1819, is followed; and by section 30 of that law it is enacted that, on a sale for arrears of revenue, all tenures which may have originated with the defaulter and his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like, settled or credited, by the first engager or his representatives subse-

quently to the settlement, as well as all tenures which the first engager may, under the condition of his settlement, have been competent to set aside, alter or renew, shall be liable to be avoided and annulled by the purchaser of the estate, subject only to such condition of renewal as attached to the tenure at the time of settlement aforesaid, saving always and except *bonâ fide* leases of ground for the erection of dwellings, &c., such as are alluded to in section 8 of Regulation XLVI of 1793. By section 32 also it is enacted that this rule shall not be construed to authorise any purchaser as aforesaid to eject a khoodkhast kuddeemee ryot, or resident and hereditary cultivator having a prescriptive right of occupancy.

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18. By the law of khoodkhast, ryots who had been placed on the land subsequently to the settlement were at once liable to ejectment; though the khoodkhast ryots in existence at the time of the settlement, and khoodkhast kuddeemee ryots in possession for 12 years before that date were not so liable. If, however, the khoodkhast ryot, liable to summary eviction, was not evicted but retained as a tenant, he, under section 33, was only liable to pay rent at a rate fixed according to the law and usage of the country.

19. We come next to Acts XII of 1841 and I of 1845, which, for the purpose of the present note, may be considered together. The former of these laws rescinded the whole of Regulation XI of 1822, except sections 36 and 38, the subject of which has no connection with that under review; by both of these laws the auction-purchaser acquired his estate free from all encumbrances which had been imposed upon it after the time of settlement, and he is entitled, after notice given under section 10, Regulation V of 1812, to enhance at *discretion* (anything in the Regulations to the contrary notwithstanding) the rents of all under-tenures in the said estate, and to eject all under-tenants with certain exemptions, amongst which, the only class to which the present remarks have reference, are khoodkhast kuddeemee ryots having rights of occupancy at fixed rents, or at rent assessable according to fixed rule under the Regulations in force.

20. It will be observed that this law distinctly gave the purchaser the right to eject all tenants holding tenures created after the settlement in 1793; and if they were not ejected, they were liable to be assessed at the discretion of the landlord.

21. From the foregoing remarks it will be seen how adverse, to a particular class of ryots, the course of legislation has, since 1793, been. Khoodkhast kuddeemee ryots were in 1793, and are up to the present day, secure not only as to possession, but as to the rate of rent that they are to pay. Khoodkhast ryots in possession at the settlement, but not khoodkhast kuddeemee—that is, in possession for 12 years before the settlement—were and are secure as to possession so long as they are willing to pay to the auction-purchaser rents at the pergunnah-rate. Khoodkhast ryots, however, whose tenancies commenced after the settlement, were at first subject, on a sale taking place, to have their engagement with the old proprietors cancelled, and were liable to ejectment only on their declining to renew their agreements at the pergunnah-rates. After a time, their tenures became liable to be summarily cancelled; and they, if not evicted, were liable to be assessed formerly at the rate current in the part of the country in which the lands were situated, and, by the latest laws, at the discretion of the landlord.

22. It follows, from the variations in legislation above noticed, that the rights of all zemindars at the time of the passing of Act X of 1859, as against their ryots, were not identical. Those zemindars who had purchased their estates at sale for arrears of revenue, before the passing of Regulation XI of 1822, had less power of interfering with their tenants than those who purchased during the years that law was in force; whereas those who have purchased since the enactment of Acts XII of 1841 and I of 1845, had larger power over their tenantry than the purchasers under previous laws; in other words, khoodkhast ryots, from being a resident tenantry with rights of occupancy, at the rate fixed by the custom of the country, against all zemindars, so long as they paid that rent, have become resident tenants, with a precarious right, that is, one that holds good against their lessor or his representative, but which is subject to be defeated by the sale for arrears of revenue at the discretion of the purchaser.

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23. I am unable to state, with anything like accuracy, what proportion of the zemindars in Bengal and Behar held their estates under each of the different sale laws that have been passed since 1793; but looking to the length of time that each law was in force, and to the frequency of sales under them severally, I incline to think that half of the zemindars of the present day hold their estates by purchases made at sales under Regulation XI of 1822. It is notorious that few, comparatively speaking, of the descendants of the zemindars at the decennial settlement are now in possession of their estates. Before 1822, estates, or portions of estates, could be sold only at the end of the year; by Regulation XI of 1822, sales might be made with the sanction of the Board of Revenue at any time of the year for any arrear that had accrued; and by Regulation VII of 1830 that rule was modified, and every estate was to be advertised for sale at the expiration of one month from the date of arrear, so that sales in effect became monthly, whereas by Acts XII of 1841 and I of 1845 sales took place only at stated periods fixed beforehand; and under these laws sales have become very unfrequent.

24. It is impossible to trace continuously the opinion of the Sudder Court on the relation of zemindars to their tenants whose rights had come into existence subsequently to the decennial settlement, for no cases are reported previously to the enactment of Regulation XI of 1822 in which any question is raised as to the effect which lapse of time may have either on the possession of or on the rate of rent payable by such ryots; but looking first to possession, there are three cases on the reports, dated severally in 1846, 1847 and 1853, alluded to in the Chief Justice's Judgment on the application for review in the case of Hills *versus* Isher Chunder Ghose, in which it is held that a zemindar suing to eject a ryot otherwise unprotected by law, if he has been in possession of his estate for more than 12 years is out of Court under the Statute of Limitations; in other words, that the possession of ryots is so far adverse as to bar the zemindar's remedy,—his right becoming extinguished indirectly by the loss of his remedy, and not directly by the title of the ryot. Various objections may be made to these rulings; but without entering into them, it is sufficient to cite a more recent decision of the Court passed in 1856, cited also by the Chief Justice, in which the Court at large, with one Judge only dissentient, ruled that, under the law *then* existing, the possession of a tenant, subsequent to the decennial settlement, was in possession with the consent of the landlord, *viz.*, a permissive possession, however long it might continue; and that no length of time can bar the landlord's right to recovery, or secure to the tenant a title adverse to the landlord's interests. This ruling seems altogether in consonance with the law in force since the enactment of Regulation XI of 1822. Looking to the effect which time has on the right of the zemindar to re-assess ryots whose tenures have been created since the settlement, the Court at large, with only one Judge dissentient, ruled on the 3rd December 1845, in the case of Mirtonjoy Shaw, defendant, appellant, *versus* Gopal Lal Tagore, plaintiff, respondent, that the law of limitation does not apply to a suit for an adjustment of rents; that rent is an annually recurring cause of action, and that the forbearance of a zemindar to assess his land at full rates for 12 years could not bar his claim to assess at those rates for the future, unless he had come under contract not to assess at full rates; this ruling is followed to the present day, and is in consonance with the law enacted since 1793.

25. Such was then the state of the law as between landlord and tenants whose tenancies were created since the decennial settlement; and such the practice of the Courts regarding that relation when Act X of 1859 was enacted, an Act passed under the power which the Governor General in Council reserved to himself, in the 7th article of the proclamation inserted in Regulation I of 1793, of enacting, whenever he might deem it proper, such Regulation as he might think necessary for the protection and welfare of the ryots and cultivators of the soil. The effect of this law has been, up to the present date, in some localities, injurious, though its ill-effect will doubtless disappear in time. It has placed before both landlord and tenant, for the first time, prominently their several rights. Both parties have asserted, to the extreme, the rights given them by law; and by such assertion antagonism has arisen between them, which, under other circumstances, would not have existed.

Minute by the Honourable Mr Justice C. B. Trevor, dated the 5th November 1864.

Leg. Pros., January 1865, Nos. 7—40.

No. 19.

26. Many of the provisions of the law are in exact accordance with the laws of 1793, and therefore are not open to objection of any sort; but by the 6th section of the Act any ryot who has cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; this rule, however, does not apply to khamar, nij-jote or sír land belonging to the proprietor of the estate or tenure, and let by him on lease for a term, or year by year; nor, as respects the actual cultivator, to lands sublet for a term, or year by year, by a ryot having a right of occupancy.

27. By this section, read together with section 5, every ryot, whether khoodkhast or pyekhast, who has cultivated the ryoti land of a zemindary for 12 years, has a right of occupancy as against the zemindar under whom he has held and his representative, but it gives him no right as against an auction-purchaser, whose powers are defined at the present day in section 37 of Act XI of 1859.

28. This enactment is a great infringement on the law previously existing; it introduces a new classification of all ryots into those with right of occupancy, and those without right of occupancy, making length of tenancy the distinction between them, and abolishing the old distinction of resident and non-resident ryots with their separate rights; moreover, whether read retro spectively or prospectively, it curtails the power of the zemindar. If it be read retrospectively and *ex-post facto* operation be given to it, all sound principle is set at nought,—existing rights on the one hand are at once cut down, and new rights on the other are created without the power on the part of the party injuriously affected to obviate its ill effects. It may be said that the Legislature in passing such a law acted in the spirit of the proclamation of 1793; but it can hardly admit of question that what may have been just in 1793 is not just in 1859, after rights have been intermediately guaranteed by the Legislature to auction-purchasers inconsistent with these provisions,—on the strength of which guarantees alone, it may be alleged, those purchases were made. If it be read retrospectively, though a curtailment of existing rights, the law simply tells every zemindar that a ryot, by a 12 years' tenancy from the passing of the Act, acquires, as against him, a right of occupancy at fair and equitable rates, and it leaves him the power of taking any legal step to prevent a tenant acquiring this right; this would not be any hardship because, as the agricultural population in this part of India is not redundant, there is no desire on the part of the zemindars generally at once to oust their tenants, but merely to obtain from them what they consider fair rents, which are, in many instances, above the rate which the ryot is willing to pay; and consequently it is to the question of rates of rent, rather than the right of summary ejectment, that the landholders have special regard.

NOTE.—No distinct ruling has been passed on this point by the High Court, but a retrospective effect has been given to this section in various cases.

29. Moreover, a prospective provision of this nature would bring the law back *partly* to what it was before the enactment of section 11 of 1822, when an auction-purchaser could not eject a khoodkhast ryot until he declined to renew his engagements at the current rates of the country; but in order to make this right one of a real and substantial nature, it should be good against auction-purchasers, and the power of summary ejectment, by the cancelment of all tenancies created since the decennial settlement, should be taken away, and the law brought back to the state in which it was up to 1822; it is probable that against this step a temporary outcry might be raised, but there would be no injustice in the law, seeing that it would only be a partial return to the state in which things were subsequent to the decennial settlement, and parties before purchasing estates would have full knowledge of the terms upon which they were about to purchase estates put up for sale.

30. But, then, the question remains as to the mode in which the fair and equitable rate of rent demandable from ryots with right of occupancy should be ascertained.

There can, I think, be little doubt that, under the common law of India, customary rents, as opposed to competition rents, have existed; it would be out of place here to enter into discussion as to the circumstances under which this state of things have arisen. Here, as elsewhere, custom has protected the weak against the strong*, and though it is difficult, perhaps impossible, to declare generally what proportion of

* See Mills' Political Economy, Vol. 1, page 292, 5th Edition.

Minute by the Honourable Mr. Justice C. B. Trevor, dated the 9th November 1864.

Leg. Pros., January 1865, Nos. 7—20.

No. 19.

the produce constitutes customary rent of the country, still it may be asserted that, under the system of customary rents, rack-renting was unknown; and that under customary rents, the tenant enjoys an interest in the produce over and above the wages of his labour and the profits of his stock; in other words, over and above the cost of production.

31. The early laws, in fact all the Regulations previous to the passing of Act XII of 1841, recognise the custom of the country under various names, as the test by which rents should be measured. In that year the Legislature introduced the discretion of the zemindar as the measure of the rent of all ryots not specially protected by law. This power had the effect of introducing the principle of competition into the country, for it enabled the zemindar to demand the highest rent that the land would bear from any one willing to compete for the same, to the detriment of any party in occupation willing and ready to pay the customary rent of the country; and thus, theoretically, if not to any great extent practically, introduced a system of rack-renting in this country. It is true that in section 37 of Act XI of 1859, the last sale law, the words "to enhance at discretion" are omitted; but the power of summary ejectment remains; and no words occur in it distinctly limiting the demands on tenants not specially protected, to the customary rate of the country. It follows, from this state of the law, that the words "fair and equitable" should, strictly speaking, as regards zemindars, who purchased their estate under the sale law in existence up to the enactment of Act XII of 1841, be measured by the customary law of the country, and that the principle of competition should be applied only in cases between zemindars who purchased the estates under Acts XII of 1841, and I of 1845, and their tenants.

32. Section 17 of Act X of 1859 details the three grounds on which a ryot, with a right of occupancy, is liable to enhancement; and the first of them is that the rate paid by him is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the place adjacent; but to state this as one of the grounds on which enhancement is demandable, and to establish it as the invariable rule by which the rents of ryots, with right of occupancy, should be governed, are two very different things; and it appears to me that the law should clearly declare that the rent of all ryots, with right of occupancy, shall be determined by the rates current for similar lands in adjacent places, according to the law and usage of the country.

33. But it may be said that it is impossible to ascertain what these rates are; that the Canoongoes' offices are abolished, their records destroyed by time and neglect; and that at the present day it is impracticable to re-establish any machinery for making those enquiries; and that to leave the Courts in every case to ascertain the customary rate, would be to impose a task on them as difficult—nay, as impossible—as that which the High Court imposed upon itself in the case Hills *versus* Isher Chunder Ghose.

34. To the enquiry made in this last case objections may be made on principle, though if the zemindar, under whom the plaintiff held his putnee taluk, purchased the estate on which the land on which the rent accrued is situated at a sale under Acts XII of 1841, or I of 1845, the legality of the decision is unquestionable; the principle is one adapted to England where the system of competition is in full force, and the zemindar is entitled to demand whatever rent the land will bear, and to receive whatever competing tenants will pay. Under this system, doubtless, the zemindar is entitled to demand the whole surplus proceeds of the land, after deducting the cost of production; but practically, even in England, the demand is limited by various considerations; but, as before remarked, we have in India, generally speaking, not yet reached this system, but legitimately we should adopt the customary system by which all minute and almost impossible enquiries become unnecessary, and those of a general nature alone suffice.

35. As remarked lately by a gentleman, not many years ago a Member of the Governor General's Council, and an authority on Revenue matters—

"In 1833 the system of fixing assessments on a comparison between the cost of production and the value of produce was abandoned, and it was ruled that the only safe and practical foundation for the calculation of a fit rental to be paid by the cultivator was the rent paid for land of the same quality, and under similar circumstances in the neighbourhood. In 1836 officers employed on settlement were further instructed to prepare a classification of the several

description of soils; and respective rates of rents with reference to their produce and situation, on an average of years, to institute enquiries and comparison of the rate of land of the same quality in adjacent places and villages to a greater or less extent, as their judgment or opportunities might suggest; and with these data to determine, to the best of their power, what was demandable as rent from each cultivator."

Minute by the Honourable Mr Justice C. B Trevor, dated the 5th November 1864.

Leg. Pros., January 1865, Nos. 7—21.

No. 19.

36. These enquiries were made by Government officers as means to an end, that is, with a view of fixing the assessment assumed as the basis of settlement; but being possible, enquiries similar to them are practicable in other cases, and without the introduction of any special machinery, but merely by oral and documentary evidence in each case, the rate of land in particular localities can be ascertained at the present day with as little difficulty as any other facts are ascertained in cases coming before the Courts, when, from economical causes, the value of the produce has risen to such an extent as to render a re-adjustment of the rent necessary. The rule of proportion, provided that the system of customary rate be adopted by law, seems to me, in the absence of disturbing causes, to be the correct one, though of course this rate would not be correct under the competition system by which the zemindar would be entitled to all the surplus proceeds or rent over and above the cost of production. Of course even then, if it can be shown that the previous rates of rents were determined by considerations irrespective of the land, and were not the real customary rates, those foreign elements must be eliminated, before the rule of proportion can be properly applied, but when that has been done, it seems to me that it is the only safe and practical guide under the circumstances.

37. From the above remarks it may be gathered that in my judgment section 6 of Act X of 1859 should be, by the Legislature, declared to be prospective in its nature; that the sale law, Act XI of 1859, should at the same time be amended, so as to declare that ryots who, under a previous zemindar, had acquired a right of occupancy under section 6 of Act X of 1859, should not be liable to be ejected by an auction-purchaser until they declined to renew their engagements with the new purchaser at the rates payable by the same class of ryots for lands of a similar description and with similar advantages in the places adjacent; and that it should be declared that the words "fair and equitable rates," used in section 5, mean fair and equitable according to the rates which lands of a similar description in places adjacent bear, according to the custom of the country.

38. But should the Government determine to leave the law as it is, thinking that any inconvenience is better than that arising from a frequent alteration of the Law of Landlord and Tenant, I am not without hope that judicial interpretation may hereafter, to a certain extent, remedy what seems objectionable in the Act, as it has been interpreted up to the present date.

No. 7019, dated Fort William, the 23rd December 1864.

From—The Hon'ble R. N. Cust, *Offg. Secy. to the Govt. of India,* Home Dept.,

To—The Registrar of the High Court of Judicature at Fort William in Bengal.

Letter from the Honourable R. N Cust, Secretary to the Government of India, Home Department, to the High Court, No. 7019, dated the 23rd December 1864.

No. 20.

I am directed to acknowledge the receipt of your letters Nos. 1967, 2897, 3010 and 3211, dated the 27th June, the 14th and 21st September, and the 22nd November last, with the enclosed copies of Minutes recorded by the Hon'ble and learned Judges of the High Court named in the margin, in reply to the letter of this Government, No. 6453, under date the 12th October 1863, in which, in reference to certain observations made by the High Court at the conclusion of their judgment in a suit brought by a landholder in Bengal under the provisions of Act X of 1859 to enhance the rent of a cultivating tenant having the right of occupancy, the Judges were asked to favour the Government of India with their opinion as to the points in which the Act appeared to them to require amendment, and to mention the difficulties which were stated to have arisen from some of the provisions of the Act.

Hon'ble C Steer.
" J. P. Levinge.
J. P. Norman.
H. V. Bayley.
F. B. Kemp.
E. Jackson.
F. A Glover.
G Loch.
C. B. Trevor.

Letter from the Honourable R. N. Cust, Secretary to the Government of India, Home Department, to the High Court, No. 7019, dated the 23rd December 1864.

Leg. Pros., January 1865, Nos. 7—20.

No. 20.

2. The Governor General in Council has read these valuable papers with much interest, and he desires me to express his thanks to the Hon'ble and learned Judges of the High Court generally for their very full consideration of the points referred to them, and for the able and comprehensive Minutes which contain the results of their deliberations. The Minutes of the Hon'ble and learned Judges, previously received, were acknowledged in my letter to your address, No. 1304, dated 12th July last.

3. As regards the principle to be observed in fixing the amount of rent to which a cultivating tenant, having right of occupancy, may be liable in a suit for enhancement instituted under the provisions of section 17, Act X of 1859, the attention of the Governor General in Council has been directed to two decisions in Sutherland's Reports, pages 112 and 226, passed by the Court on dates subsequent to the date of the decision referred to in the first paragraph of this letter, in which the presiding Judges appear to have proceeded upon a different principle from the principle laid down and acted upon in the decision of the earlier date.

4. The Governor General in Council does not, of course, desire to express any opinion as to which of these decisions is correct; but he is sure that the Judges of the High Court will agree with him that the law cannot be allowed to remain in the state of uncertainty to which it has necessarily been reduced by the conflicting judgments of the High Court in the cases referred to.

5. At the present time there are probably several hundred suits pending in the subordinate Civil and Revenue Courts in Bengal in which the same issue is involved. The Judges of the Courts on whose files the suits are borne, not only look to the judgments of the High Court to guide them to a decision, but they are bound to accept the decisions of that Court as precedents, and to shape their own decisions accordingly. If, however, there is a conflict of decisions in the High Court, it is impossible for the Judges of the Lower Courts to fulfil this requirement. I am desired to add that the practical inconvenience resulting from such a state of things is not confined to the Courts. It extends also to the suitors and to the general public whose interests become seriously affected when on any point, bearing on those interests, it is not possible to say what the Law really is.

6. A declaratory enactment of course offers an easy and immediate solution of the present difficulty; but the Governor General in Council is disposed to think that the Judges of the High Court will concur with him that it is not desirable that legislation should be resorted to so long as a remedy can be applied in some other way. An alternative presents itself in a decision of the question by the Judges of the Court collectively, and in the belief that the public, or that portion of it whose interests are involved, would regard this as a more satisfactory mode of deciding the question than a declaratory law passed either by the Government of India, or by the Council of the Governor of Bengal, for making Laws and Regulations, the Governor General in Council directs me to suggest, for the consideration of the Hon'ble and learned Judges of the High Court, whether an arrangement might not be made by which a case involving the point might be argued before all the fifteen 15 Judges present with the Court, and a decision passed which would declare what the law is and be binding on the whole Court including the several Division Courts, as well as on all Subordinate Courts. I am directed to add that, if this can be arranged, it is obviously desirable that it should be done with as little delay as possible, in order that uniformity of decision may be secured in the numerous suits now pending, and appeals which will certainly be made so long as the law continues in a state of uncertainty prevented.

7. I am desired to take this opportunity of enquiring whether there would be any legal or other objection to a rule being laid down by the Judges of the High Court, providing that whenever any one Division Court shall differ from any other Division Court upon a point of law, or usage having the force of law, the point shall be argued before the whole Court, and the decision arrived at, whether by the Court collectively, or by a majority of the Judges present, shall be considered as settling the point of law or usage so argued, and whether if there be no legal or other objection to such a rule being laid down by the Judges, the Judges will add it to their rules of practice, or would prefer that it should form the subject of legislation.

No. 1, dated Fort William, the 7th January 1865.

Letter from the Government of India, to the Secretary of State, No. 1, dated the 7th January 1865.

From—The Government of India,

To—The Secretary of State for India.

WE have the honour to transmit, for your information, a copy of a communication, No. 7019, dated the 23rd ultimo, which we have caused to be made to the High Court at Calcutta, on the subject of the decisions of the Court in cases of enhancement of rent under Act X of 1859, together with a copy of the previous correspondence, including the Minutes of the Judges on the proposed amendment of the Act.

Legislative Proceedings, dated 12th October 1863, Nos. 23 to 25.
Legislative Proceedings, dated 3rd November 1863, No. 1.
Legislative Proceedings, dated 23rd May 1864, Nos. 9 to 12.
Legislative Proceedings, dated 12th July 1864, Nos. 4 to 7.
From Officiating Registrar, High Court, No. 1967, dated 27th June 1864, and 2 enclosures.
From Officiating Registrar, High Court, No. 2897, dated 14th September 1864, and 5 enclosures.
From Officiating Registrar, High Court, No. 3010, dated 21st September 1864, and enclosure.
From Officiating Registrar, High Court, No. 3241, dated 22nd November 1864, and enclosure.

No. 1311A., dated Nynee Tal, the 20th October 1864.

From R. Simson, Esq., Secretary to the Government of the N.-W. P., to the Secretary to the Government of India, Home Department, No. 1311, dated the 20th October 1864.

From—R. SIMSON, Esq., *Secretary to the Government of the N.-W. Provinces,*

To—The Secretary to the Government of India, HOME DEPARTMENT.

Leg. Pros., August 1865, Nos. 18—27.

No. 18.

WITH reference to your letter No. 892, dated 21st June last, and in continuation of the docket from this Office, No. 1209A., dated 27th ultimo, I am directed by the Hon'ble the Lieutenant-Governor to forward to you, for submission to His Excellency the Governor General in Council, the accompanying copy of a letter from the Secretary to the Sudder Board of Revenue, No. 694 A, dated 29th ultimo, with the draft of a Bill to amend Acts X of 1859 and XIV of 1863.

2. His Honour has recorded his opinion, in a Minute of the 13th instant, a copy of which is enclosed, that the amendment of section VI of Act X is unnecessary, but if the establishment of a prescriptive right of occupancy after 12 years, as provided by that section, be considered objectionable, that the remedy is rather the repeal of sections VI and XVII than the mere lengthening of the term of prescription, which is open to all the objections raised against the present Act.

3. A register of cultivators having a prescriptive right of occupancy would be highly useful, but His Honour does not think that this can be summarily completed, and would allow it to be prepared during the whole period that a district is under re-settlement. Two years might be allowed in the case of districts such as Saharunpur, Mozuffernuggur and Goruckpore, where the settlement is finished or nearly so.

4. Section X of the proposed Draft Act appears to the Lieutenant-Governor to be objectionable, as giving retrospective effect to legislation. A cultivator should not now be deprived of any rights which he has already acquired.

5. With reference to the Board's remarks as contained in paragraph 7 of their Secretary's letter on sections XIV and XV of the Draft Bill, the Lieutenant-Governor considers it a dangerous principle to authorise by law any distinction between different classes of cultivators having precisely the same rights. If anything is necessary, which is doubtful, it seems to His Honour that it would be better to declare as suggested by Sir B. Peacock, that "*fixed rates*" shall include "rates which can be determined on a fixed principle," which would meet this class of cases.

6. The Board have added section XXVI to the Act "to do away with a disability under which zemindars and cultivators in Maafee Estates now labour." It is perhaps hard upon the *cultivators* in Maafee Estates to pay full value of stamps instead of one-fourth allowed to other cultivators under Note G., Article 11, Schedule B of the Stamp Act, but His Honour does not see why the Maafeedars themselves should not pay full stamp duty.

7. In regard to the question of limitation, His Honour does not see the reason of limiting the proposed section 13 to occupants of not less than six years' standing,—and considers that every occupant holding from year to year, and not for one year only, unless it is otherwise stipulated, should have notice of intention to eject of not less than six months.

Letter from R. Simson, Esq., Secretary to the Government of the North-Western Provinces, to the Home Department, No. 1311, dated the 20th October 1864.

8. Section 19 of Act X of 1859 might, in His Honour's opinion, be amended as suggested by Sir B. Peacock by inserting the words "not holding under written agreement" after the two first words "any ryot."

9. His Honour is inclined to agree to the proposal to transfer to the District Judges, the hearing of all appeals under the Act now tried by Commissioners.

Leg. Pros., August 1865, Nos. 18—27.

No. 18.

Letter from W. C. Plowden, Esq., Secretary to the Board of Revenue, to the Government of the North-Western Provinces, No. 694, dated the 29th September 1864.

No. 694A., dated Allahabad, the 29th September 1864.

From—W. C. Plowden, Esq., *Secretary, Sudder Board of Revenue, N.-W. Provinces,*

To—*The Secretary to the Government of the North-Western Provinces.*

With reference to your letter No. 776 A., dated 21st June last, Revenue Department, calling for a draft of the amendments proposed by the Board in the existing Rent Law, I am directed to state that the draft of a Bill, prepared at the request of the Governor General, by Mr. Muir, in communication with Mr. Money, to amend Act X of 1859, and Act XIV of 1863, was submitted demi-officially both to His Excellency the Viceroy, and to His Honour the Lieutenant-Governor.

2. The Board have taken that draft as the basis of the Bill now submitted. A variety of new points have come under discussion involving the necessity for new provisions. The Board have therefore revised the whole, and now submit an amended Bill. The numbering of the sections remains the same.

3. A copy of the remarks appended to the original draft is herewith submitted.

4. The following observations refer chiefly to the modifications and additions made in the amended Bill.

5. Section I repeals section VII as well as section VI of Act X. But section VII, Act X, has been re-enacted as section XIIA of the Draft Bill.

6. Section XIII A has been added to meet a class of cases which may and do certainly occur. At present there is no Law applicable to such cases.

7. In addition to the remarks on sections XIV and XV appended to the former Draft Bill, the Board would here observe, that the expression "the same class of ryots," has been variously interpreted. By some it is held to refer simply to the two classes of hereditary and non-hereditary. But the Board believe it was the intention of the Legislature to leave the expression wide, so as to admit of a construction adapted to the habits and customs of the people. In illustration of the various rates that may prevail in a district, the Board would refer to the 92nd paragraph of Mr. Thomason's report on the settlement of Azimgurh, where the distinction between the rates of the Ashraf and Urzal classes is adverted to. Such distinctions may not be defensible in theory; but so long as they are acted upon and recognised by the people themselves, the Board think that they should form the basis of adjustment on the occurrence of dispute, or of claims for enhancement. The terms in which sections XIV and XV have been drawn fully accord with this object.

Vol. I of the Settlement Reports, page 35.

8. Section XVI A.—The first clause of this section has reference to the ruling of the Sudder Court, that the zemindar may sue in the ordinary Civil Courts to oust a cultivator without prescriptive title of occupancy. It was apparently presumed by the framers of Act X, that where there was no right of occupancy, the zemindar would not proceed to ejectment by regular suit, but summarily under section 25.* Hence the omission which has led to the construction of the Court. But it would be anomalous and inconsistent that this one of all the descriptions of cases between landlord and tenant should alone be heard in the Civil Courts; and moreover, questions may arise, as to whether the tenure really is one held at will,—and also as to the time of the agricultural year at which only ouster is valid,—questions best cognisable primarily by the Revenue Authorities. The Board have therefore added a clause to secure this.

9. The second clause provides for the recovery of damages on account of illegal ejectment; the consideration of any claim of the kind evidently being bound up in the suit regarding ejectment.

Letter from W. C. Plowden, Esq., Secretary to the Board of Revenue, to the North-Western Provinces Government, No. 694A., dated the 29th September 1864.

Leg. Pros., August 1865, Nos. 18—27.

No. 18.

10. A new section XVIII A has been added to provide for the numerous classes of disputes that arise between landlord and tenant as to the division, estimate and appraisement of crops, where rent is taken in kind or its equivalent. The zemindar can harass his tenant by neglecting to be present, by thus exposing him to the injury of his crop by keeping it too long standing, and by bringing exorbitant claims afterwards for his alleged share. The tenant can similarly harass the landlord by refusing to come to terms, and in the absence of a legal referee may often baffle him successfully. With these remarks, the Board trust that the two sections will approve themselves to the Legislature.

11. Section XVIII C has been added in accordance with the Board's proposals contained in my predecessor's No. 330, dated 20th May last. It is intended to provide for a class of cases over which the Collector's Court should have exclusive primary jurisdiction, *viz.*, suits by sharers against lumberdars and by zemindars against maafeedars for over-exaction.

12. Section XXVIII B is a consequence of the alteration made in section 28 of Act X, by section 23 of the modified draft.

13. Section XXVIII C is rendered necessary by a ruling of the Sudder Court that suits under section 28, Act X, are not regular suits, but administrative cases, the appeal in which lies to the Revenue Authorities.

14. Section XXVI has been added to do away with a disability under which zemindars and cultivators in maafee estates now labour.

Note G. of Article 11, Schedule B, Act X of 1862, introduces a distinction between suits for arrears of rent for lands paying revenue to Government, and similar cases where the Government revenue has been assigned away.

That distinction appears to be partial and unjust.

15. The landlord of a village paying revenue to Government is entitled to sue for arrears of revenue or rent on paper bearing a stamp a quarter of the value of that required in the Civil Courts. If Government assigns away its revenue to a third party, the relative positions of zemindars and ryots are otherwise unchanged, but forthwith the landlord is deprived of the privilege which he previously possessed of suing on a quarter value stamp. It must be remembered that the charge is one upon the ryot or zemindar cast in a suit for arrears of rent or revenue brought by the maafeedar; for the stamp is of course included among the costs of suit. It is unreasonable that the zemindars and ryots should be in a worse position, not in consequence of any act of theirs: but simply because Government may have alienated its own right to a third party. It is deemed advisable to amend this state of things, and to allow no distinction in these classes of suits, whether the Government revenue has been assigned away or not.

16. The remaining modifications and additions refer entirely to the appellate provisions of Act X of 1859.

17. The attention of the Board has been frequently drawn to the inconvenience of the existing provisions of the law with regard to appeals. These are stated with some force in a letter from Mr. Hume, the Collector of Etawah, a copy of which is annexed in manuscript.

18. An appeal now lies to Commissioners from orders, and from judgments of minor importance; but if the value of the property in suit exceed Rs. 100, or the judgment be affected by any of the conditions specified in section 153, Act X of 1859, or if the suit be under clause 1, 3, 5 or 6 of section 23, the appeal lies to the Zillah Judge.

If the Courts of the Commissioners were generally more accessible than those of the Zillah Judges, the convenience of a majority of the agricultural community would be consulted by the existing arrangement for disposing of the minor appeals; but as there are only five Commissioners in the Regulation Districts of these Provinces, while there are no less than eighteen Zillah Judges, it is obvious that the aggregate distance travelled by parties concerned in appeals to Commissioners must be between treble and quadruple the distance which they would have been required to travel if the appeals had laid to the Judges. For this reason, and also in consideration of the doubts which have frequently arisen as to whether the appeal lay to the Commissioner or to the Judge, the Board would recommend that Commissioners be relieved of their appellate jurisdiction under the Act.

Modified draft of Bill to amend Acts X of 1859 and XIV of 1863.

Leg. Pros., August 1865, Nos. 18—27.

No. 18.

Modified draft of Bill to amend Acts X of 1859 and XIV of 1863.

WHEREAS it is expedient to amend certain provisions in Act X, 1859, and Act XIV, 1863, it is hereby enacted—

I. Sections VI and VII, Act X, 1859, are repealed.

II. A register in which shall be entered the names of such cultivators as may, under the provisions hereinafter enacted, establish a prescriptive right of occupancy, and who shall not be liable to ejectment excepting under clause 5, section 23, Act X, 1859, or otherwise in due course of the law as then existing, shall be maintained in every district. It shall be competent to the Local Government to prescribe the mode in which such register shall be kept up.

III. In all suits to eject any cultivator, or for the recovery of the occupancy or possession of land from which a cultivator has been illegally ejected, that may now be pending, or that shall be instituted [up to any date that may hereafter be fixed and notified by the Local Government]—[within (two) years from the passing of this Act] provided that the cultivator be not liable to ejectment under clause 5, section 23, Act X, 1859, such cultivator shall be held to have a right of occupancy:—

(1) If his family has been in occupancy of the land for not less than 16 years before the commencement of the suit; provided that two or more successions to the land in question have taken place in the family.

(2) If his family has been in occupancy for not less than 25 years before the commencement of the suit; provided that one or more successions to the land in question have taken place in the family.

[It shall be competent to the Government at any period within (ten) years from the passing of this Act to issue a Notification fixing the date up to which this section shall have effect for any district, or for any pergunnah in a district; such date being not more than (two) years from the time at which the notification fixing the date may be issued.]

IV. At any time [prior to such date]—[within (two) years from the passing of this Act,] it shall be lawful for any ryot to bring a suit for declaration of right of occupancy, and, if he establish his title under the conditions specified in the last preceding section, his name shall be recorded in the register prescribed by section II of this Act. The provisions of section XI, Act XIV 1863, shall be applicable to suits brought under this section.

V. It shall be competent to any officer engaged in the formation or revision of a settlement of land revenue, or to any officer empowered by the Local Government to complete the aforesaid register for any district or portion of a district, of his own motion, and without the institution of any suit, to hold an investigation, and to record evidence, and in accordance therewith to enter the name of any cultivator falling under section III of this Act, in the register of tenants having a right of occupancy. Every order for such entry shall have the force of a decree, provided that no such order shall be passed unless the officer aforesaid shall be satisfied that every proprietor concerned has been served with a notice to appear if he think fit and make objection against the title of the cultivator. Every such notice shall be served in the manner indicated in section 13, Act X, 1859.

VI. Where the evidence on either side may not suffice either to prove or to disprove possession for the periods specified in section 3, judgment may be given in favour of the cultivator if by the general opinion and consent of the neighbourhood the conditions there laid down are supposed to exist.

VII. After the [date which shall have been fixed by the Government as afore provided] expiration of (two) years from the passing of this Act, in all suits that may be brought for the ejectment of any cultivator, or for the recovery of the occupancy or possession of land from which a ryot has been ejected, provided that the cultivator be not liable to ejectment under clause 5, section 23, Act X, 1859, and in all suits which may be brought by any cultivator for declaration of a right of occupancy, such cultivator shall be held to have a right of occupancy, if his family has been in occupancy or possession for not less than 50 years, provided that two or more successions to the land have taken place in the family.

VIII. For the purposes of the preceding sections, persons who, according to the custom of the vicinage, are entitled to inherit a cultivating holding, shall be deemed to be members of the same family.

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IX. The right of occupancy to be declared under the preceding sections shall extend only to fields or portions of land held continuously in the occupancy of the family, for the several periods therein specified, provided that where, according to the usage of the village or the vicinity, cultivators can vary their holding without injury to their rights, such varied occupancy shall be held to be continuous occupancy.

X. If on the trial under section 3 of this Act, of any suit for ejectment, or for recovery of possession, or for declaration of a right of occupancy, it shall appear that a decree for the maintenance of possession had been previously made in accordance with the provision in section 6, Act X, 1859, such decree shall not preclude the re-trial of the cultivator's title under the provisions of this Act; provided that possession in virtue of and subsequent to such decree shall not be reckoned in calculating the length of the cultivator's occupancy.

XI. Any person who shall accept the lease of a portion of land, and engage for the same by the exchange of pottah and kabuliyat, and shall before the expiration of the lease without good and sufficient reason relinquish the same, shall be liable to damages for the breach of his engagement, any thing in section 19, Act X, 1859, notwithstanding.

XII. All decrees and orders having the force of decrees passed under the preceding sections shall be appealable as decrees under Act X, 1859. All such orders and decrees passed by a Deputy Collector shall be appealable to the Collector.

XIIA. Nothing contained in the foregoing sections shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot when it contains any express stipulation contrary thereto.

Corresponds with section 7, Act X, 1859.

XIII. No ryot who shall have been in possession with or without a pottah, for a period of not less than (six) years shall be liable to ejectment, excepting for an outstanding balance of rent, otherwise than at the close of the month of Jeth, and after a notice of intention to eject served in the manner prescribed in section 13, Act X, 1859, not more than one year, nor less than three months, before the close of the said month of Jeth.

XIIIA. No under-tenant or ryot who holds or cultivates land, without a written engagement, by permission, express or implied, of the proprietor, and has previously paid no rent, or having previously paid rent, if the rate or amount paid be not capable of proof, shall be liable for anything beyond a fair and equitable rent, unless a written notice shall have been served on him in the manner prescribed in section 13, specifying the rent to which he will be subject.

XIV. It shall be competent to the Local Government to declare in respect of any class of cultivators having a right of occupancy, in any locality, the rate of rent which they are liable to pay, such rate being denoted by a fixed proportion of the rack-rent payable for lands of the same description by tenants at will.

XV. Wherever under the foregoing section a rate may have been declared, the rent of no cultivator to whom such rate may be applicable, shall be liable to enhancement, unless such rent is proved to be below the rate so declared, or unless the conditions in section 17, Act X, 1859, should otherwise warrant enhancement.

XVI. It is hereby declared that the words "places adjacent," in section 17, Act X, 1859, may be taken to signify such extent of country in the vicinity as, in the judgment of the Court, may reasonably be included in the investigation for the purpose of ascertaining the prevailing standard of rent.

XVIA. Clauses 5 and 6, section 23, Act X, 1859, shall be read as follows:—

"5. (As it stands, adding the words) 'or on account of the cultivator being a tenant at will.'

"6. (As it stands, with the addition) 'and to recover damages on account of such illegal ejectment.'"

XVII. In modification of section 3, Act XIV, 1863, it is hereby declared that no claim for abatement of rent, on the ground that the rate hitherto paid is higher than that paid by other cultivators, shall be heard excepting by officers employed in making or revising a settlement of land revenue.

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XVIII. It shall be competent to the Local Government, by a Notification to be published in the Gazette of such Government, to declare the provisions of section 13, Act XIV, 1863 (for the commutation of rents in kind to fixed payments) applicable to any district or portion of a district whether under settlement or not, and to declare what officers are empowered to hear and decide cases under that section, and otherwise to lay down rules determining the circumstances under which such suits may be heard or refused, and the principles to be followed in their adjudication.

XVIIIA. Wherever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of similar nature requiring the presence both of the cultivator and proprietor, either personally or by a representative, if the proprietor shall neglect to attend at the proper period, the cultivator may apply to the tehsildar, who may thereupon issue notice to the proprietor to attend within a certain period; and failing his appearance within the period so fixed, the cultivator may proceed to divide, estimate, or appraise, the crop in the presence of two witnesses, or (as provided in the following section) he may call in a Government officer to make the division, estimate, or appraisement.

XVIII B. Wherever rent is taken in the manner mentioned in the foregoing section, and a dispute regarding the division, estimate, or appraisement, is alleged in a petition of plaint by either of the parties concerned, the Collector or other officer authorised to try cases under Act X, 1859, may direct the tehsildar to depute an officer of his establishment before whom the division, estimate, or appraisement shall be made; and the decision of such officer shall, subject to the orders of the Collector, be authoritative and final.

XVIIIC. The clauses of section 1, Act XIV of 1863, shall be read as follows:—

1st.—"Suits by lumberdars for arrears of Government revenue payable through them by the co-sharers whom they represent, and for village expenses and other dues for which the co-sharers may be responsible to the lumberdars.

2nd.—"Suits by co-sharers for their share of the profits of an estate or any part thereof after payment of the Government revenue and village expenses, or for a settlement of accounts.

3rd.—"Suits by maafeedars or assignees of Government revenue for arrears of revenue owing to them as such maafeedars or assignees.

4th.—"Suits by talukdars and other superior proprietors for arrears of revenue or otherwise (not being rent claimable under section 23 of the said Act X, 1859) due to them as such talukdars or other superior proprietors.

5th.—"Suits for damages on account of the illegal exaction of revenue or of any unauthorised cess or impost, or on account of the refusal of receipts for revenue paid or tendered. Such suits may be brought by co-shares against their lumberdars, by zemindars or lessees against maafeedars or assignees of Government revenue, and by inferior proprietors against talukdars or other superior proprietors."

XIX. Suits under clause 2, section 1, Act XIV, 1863 [suits for profits or for a settlement of accounts] shall not be exclusively cognisable in the Court of the Collectors of Land Revenue; but may be heard as ordinary suits in a Civil Court.

XX. It shall be competent to a Collector or other officer acting under the aforesaid section, to stay further proceedings in any such suit and to refer the suitors to the Civil Court.

XXI. Whenever an original suit of the nature specified in section 19, shall be laid in any Civil Court, and it may be brought to the notice of the Court, that a suit involving any of the points at issue is depending under section 1, Act XIV, 1863, in any Revenue Court, the Civil Court aforesaid shall thereupon issue a precept to the Collector, desiring him to stay further proceedings and to forward to such Court the record of any proceedings already held in the case.

XXII. The provisions of section 153, Act X, 1859, are hereby declared applicable to suits under section 1, Act XIV, 1863.

XXIII. Section 28, Act X, 1859, is hereby cancelled, and the following section shall be substituted for the same:—

"Section XXVIII A. (First sentence stands. Every such suit shall be instituted within the period of 12 years from the time when the title of the person claiming the right to assess the land or dispossess the grantee first accrued. Provided that the title of a proprietor to assess such land shall be held to accrue from the date on which he succeeded to the pro-

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prietary right by inheritance, unless the grantee shall produce a written deed of grant, specifically covenanting that the grant shall never be resumed by the grantor or his representatives, or shall be resumed only upon some contingency or condition which has not taken place; provided further that rent-free possession for 50 years, including two successions, shall vest in the grantee or his representative a proprietary right in the land so held. But no length of rent-free occupancy, nor any grant made by the proprietor shall release such land from its liability to Government for the revenue assessable on the same.

"XXVIIIB. Clause 14, section 1, Act XIV, 1859, shall be read without the words 'or of some person under whom he claims.'

"XXVIIIC. All suits under this section shall be subject to the same procedure both in their trial and appeal, as other regular suits under this Act."

XXIV. The rule of limitation contained in section 37, Act X, 1859, is hereby declared to be in force, any other law notwithstanding.

XXV. The provisions of Act VIII, 1859, or other law of Civil Procedure for the time being, shall be applicable to suits under Acts X, 1859, and XIV, 1863, and to suits brought under this Act, in so far as such provisions may not be inconsistent with the provisions of those Acts.

XXVI. In suits instituted in the Courts of Collectors and Deputy Collectors under this Act, or Acts X, 1859, and XIV, 1863, for the recovery of arrears of revenue or rent of land paying revenue to Government or to an assignee of the Government revenue, or for the recovery of money in the hands of an agent of such land, and in suits instituted by co-sharers for recovery of their share of profits under clause 2, section 1, Act XIV, 1863, the statement of claim shall be written on paper bearing a stamp of one-fourth of the value prescribed for suits instituted in the Civil Courts, and in all other suits instituted in the Courts of Collectors and Deputy Collectors under the said Acts, the statement of claim shall be written on paper bearing a stamp of eight annas, anything in Note (G), Article XI, Schedule (B), Act X, 1862, notwithstanding.

XXVII. Sections 151 to 161 of Act X, 1859, are repealed.

XXVIII. In the performance of their duties under Acts X, 1859, and XIV, 1863, and under this Act the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners and the Boards of Revenue; and the Deputy Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate.

XXIX. All orders and judgments passed by a Deputy Collector under Act X, 1859, or Act XIV, 1863, and under this Act, not being orders passed in the course of suits or in the course of enquiries on applications under sections 25, 26 or 27 of Act X, 1859, and relating to the trial thereof, provided the value of the claim, estimated according to any law for the time being in force for the valuation of suits, do not exceed Rs. 100, shall be appealable to the Collector. The petition of appeal shall be written on a stamp paper of eight annas value, and shall be presented to the Collector within fifteen days from the date of the decree or order, provided that such time as may be requisite for procuring a copy of the decree or order appealed against shall not be reckoned as part of the fifteen days.

XXX. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons. If, on the day fixed for hearing the appeal or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an agent, the appeal shall be dismissed for default. If the appellant shall appear, and respondent shall not appear in person or by an agent, the appeal shall be heard *ex parte*.

Same as section 157, Act X, 1859.

XXXI. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector for the re-admission of the appeal, and if it shall be proved to the satisfaction of the Collector that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal.

Same as section 158, Act X, 1859.

XXXII. After hearing the appeal the Collector shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final.

Same as section 159, Act X, 1859.

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XXXIII. All such orders or judgments as are above described in section XXIX when passed in the first instance by the Collector shall be final, but it shall be competent to the Board of Revenue to call for any case in which the order of a Collector, either original or in appeal, is final, and to pass such orders thereon as they may think proper.

Same as section 154, Act X, 1859.

XXXIV. In suits in which the judgment of the Collector is final as provided in the last preceding section, the Collector may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of, could not produce at the time of trial.

XXXV. All orders and judgments passed by a Collector or a Deputy Collector under Act X, 1859, or Act XIV, 1863, and under this Act, not being orders passed in the course of suits or in the course of inquiries on applications under section 25, 26 or 27 of Act X, 1859, and relating to the trial thereof, provided the claim, estimated according to any law for the time being in force for the valuation of suits, exceed Rs. 100, and do not exceed Rs. 5,000, shall be appealable to the Zillah Judge. If the amount or value in dispute exceed Rs. 5,000, the appeal shall lie to the Sudder Court.

XXXVI. The petition of appeal *to the Zillah Judge or Sudder Court* shall be written on the stamp paper prescribed for appeals from the subordinate Civil Courts with reference to the amount or value of the property involved in the appeal, and the rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the Zillah Judge or Sudder Court under this Act.

Note by Mr. W. Muir on the draft Bill to amend Acts X of 1859 and XIV of 1863, dated the 2nd May 1864.

No 18.

Note on the above Bill by Mr. W. Muir.

This draft Bill has been drawn up in communication with my colleague at the request of His Excellency the Governor General.

It is based upon the Notes written by Mr. Money and myself on the subject last year.

Sections III and VI contain the limitation proposed for the establishment of a right of occupancy. Section VI contains the permanent limitation of 50 years including two successions. But, in view of the expectations which have been created by previous administrative and legislative action, a less stringent limitation has been permitted as the basis of present registration. This causes some complexity and embarrassment, in reference to the period during which the milder standard is to remain in force.

Mr. Money is of opinion that this period should be fixed by the Bill, and proposes that two years from the date of its passing be the limit. The period he thinks might be open to discussion; but he would not fix too long a term.

I am apprehensive that any fixed period of this kind would not afford sufficient leisure for the drawing up of the registers which primarily should be based on the less stringent limitation, and which in these Provinces would ordinarily be completed at the revision of the land revenue settlement. I have accordingly proposed that the Local Government be authorised to fix and notify the date for any district or pergunnah. It might be allowed to do so at any time within the next ten years for any district or pergunnah;—the term being limited in each case to two years. The extreme limit therefore to which the Government could, under this proposition, extend the milder standard of limitation, would be 12 years. Considering that a register would have, under the proposed law, to be compiled for every district, both where a revision of settlement is required, and where it is not required, and that it would have to be prepared generally, I apprehend, by a special agency, I do not think that the period is longer than may possibly in some cases be required. Of course the sooner the operation is completed the better; and no doubt the Local Government would keep this object in view.

Section V is needed in order to give Settlement and Registering Officers the power of entering on their own motion upon investigation of the status of cultivators, and making judicial orders for registration accordingly. The class of cultivators are so ignorant and simple that in respect of most of them it would be idle to attempt to make them understand that if they failed to come forward and establish their position as occupant cultivators within a given period, they would lose their right to the less stringent limitation. It is therefore, I think, the duty of Government to interpose and to register all who are found to meet the requirements of the law.*

Section VI is proposed because in the absence of records there will be many cases in which it may be impossible to prove that the cultivator has been the required term in possession, but in which the probabilities, joined to the hearsay evidence and consent of the neighbourhood, may leave little or no doubt on the subject. It would be hard to reject such cases: and yet the Courts might not admit the evidence without some such provision as that here suggested. The provision is not, however, proposed for section VII.

Section VIII is based on the principle explained at page 497 of Directions to Collectors, paragraph 9.

Section V enacts that a decree passed under section 6, Act X of 1859, shall not bar re-trial of the cultivator's status under the present enactment, and that possession, continued under such decree, shall not count under section 3 against the proprietor. I observe that Sir B. Peacock proposes to recognise all tenures, in respect of which such a decree has issued, to be *ipso facto* hereditary tenures. But I do not perceive the justice of this view. See paragraph 47 of my first note. This provision will, however, be unnecessary in the case of section 6.

Sections XI and XIII are based on proposals contained in Sir Barnes Peacock's Minute.

Section XIV.—I have put this upon a wider footing than I proposed in my second Note, for the following reason. I understand that the principle there proposed is not thought such as will meet the requirements of Bengal; for it is alleged that in that province there are large classes of cultivators who, like the proprietary communities in these provinces, had been from time immemorial in independent management of their lands, but by the Permanent Settlement were reduced to the position of "kudeem kashtkars." These classes, in virtue of their remote connection with the soil, hold at privileged rates far below any standard to which the "Mouroosee Assamee" could lay claim. The percentage of reduction proposed for the latter would accordingly be no boon to the Bengal privileged cultivator: but would, on the contrary, raise his rent out of all proportion above the rate at which he has been accustomed, and holds himself entitled, to pay. There must, however (one would suppose), be some principle on which these rents have adjusted themselves, (*e.g.*, a half, a third, or a fourth of the produce,) and in reference to which it might be declared that individuals belonging to such classes were entitled to have their rents tested and determined. Local investigation might, for example, show that in a certain quarter, the privileged class hold at one-half the ordinary rack-rent; in which case the standard would be declared at 50 per cent. below the rack-rent of similar land. I do not see that there would be anything unjust in this because of the Settlement being permanent (see close of Sir B. Peacock's Minute): it would be simply an endeavour to place upon a secure and intelligible basis rights already existing as a condition of the settlement, and the necessity for the maintenance of which the Chief Justice recognises in his concluding paragraph.

In the case of the "Mouroosee Assamees," probably one rate of deduction from the full rack-rent (say 20 per cent.) would suffice as a general standard throughout these provinces. But authority has been left in this section to fix

* NOTE.—In reference to this Mr. Money writes:—"While I entirely concur in the expediency of the proposed provision, I am of opinion that the entries in the final register should be such only as would be binding on the Civil Courts; and in this view, the awards of Revenue Authorities should not be held to be final until after the expiration of three years from their date, unless they should have been intermediately contested by suit in a Civil Court and confirmed. The registers prepared by Revenue Officers should be regarded as temporary, the finality of the entries made in them being held to be conditional on the expiration of the period limited by law for contesting them, or on the event of their being contested within that period and confirmed, unless the Legislature should see fit to provide that the awards of any special agency which might be appointed should be final, subject only to appeal in the manner provided for appeals from decisions of the subordinate Civil Courts."

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the rate according to the locality, which in Bengal may be necessary in the cases just contemplated.

I have endeavoured to shape the measure, so as to embrace the Bengal difficulty, because I was desired to consider the subject in reference to that part of the country as well as our own.

Section XVI.—I observe that in some decisions, the phrase *places adjacent* has been construed in a very contracted sense. Perhaps it might be well therefore to explain, as here proposed, that a Court can take into the scope of its investigation as wide a circuit as it may think necessary for the ascertainment of a fair rate.

Section XVII.—The grounds for the amendment of section 3, Act XIV, 1863, are fully given in paragraphs 2 to 7 of our Board's letter, dated 16th April 1863, and I do not think anything farther needs to be added on the subject here. In some backward tracts, where cultivators are few, the tenant-at-will holds at rates even lower than the hereditary tenant. But the latter has consented to his rates and position, and should abide thereby. It would be altogether wrong in such a case to bring down his rates even to the level of the rates of the tenant-at-will. It is a right and equitable principle to say that the proprietor shall not *enhance* his rent, unless he can show that it is below the prevailing standard. It is quite another thing to say that the hereditary cultivator shall have the right to get the rent at which he has all along been holding, and to which he has agreed either expressly or by tacit consent, reduced because other tenants hold at lower terms. The provision is necessary at the time of making a settlement, but should be confined to that occasion.

In other respects sections 17 and 18 of Act X, 1859, appear to me proper and sufficient. The case supposed by the Chief Justice at paragraph 7 of his Minute shows the injustice of the present law, because after 12 years have elapsed, the proprietor might not be able to raise his rents on the tract which he had reclaimed, since the cultivators would already have acquired a prescriptive right to hold at the rates of the vicinage, and all those rates might from his own concession be on the same low standard; he could not therefore safely proceed by threatening ejection if the enhanced rent were refused; but if the changes now proposed are allowed, he would have full authority to raise his rents on pain of ejectment, and this objection would not therefore hold.

Section XVIII.—Supreme Government in reply to our letter of 16th April 1863, paragraphs 8 to 12, doubted whether it would be safe or expedient to confer a general and continuing power to commute rents in land to rents in money. No doubt the measure, however important, must not be urged prematurely, and its operation must be carefully watched. In this section accordingly a full discretionary power has been reserved to Government, both in respect of the districts to which its action is to extend, the officers to be employed, and the principles on which they are to proceed.

Sections XIX to XXI are supported by our Board's letter of 16th April quoted above, and section 22 of our letter of 9th September 1863.

Section XXIII has been introduced in conformity with the Board's address dated 9th September 1863, to which a reference is requested.

Section XXIV has been rendered necessary by certain doubts as to whether the limitation in Act X has not been superseded by the limitation in Act XIV, 1859.

Section XXV has been introduced because in the trial of suits under Acts X, 1859, and XIV, 1863, and under this proposed law, the Collector's Court is to all intents and purposes a Civil Court of first instance, and there is no reason why the procedure should not be in all important points the same. The absence of a complete procedure has led to considerable irregularity in the conduct of cases in the Revenue Court. Or perhaps it would be better in Mr. Harington's new Bill of Civil Procedure, to introduce a clause declaring certain sections applicable to the Revenue Courts, in the same way as certain sections are in that Bill made applicable to the Small Cause Courts.

The Viceroy desired us to consider whether some stipulation for arbitration of rent and tenancy disputes might not be entered in the Settlement Administration Paper, but our Board do not see our way to this.

2nd May 1864. W. MUIR.

No. 180, dated Etawah, the 10th June 1864.

From—A. O. HUME, Esq., C.B., *Collector of Etawah,*
To—*The Commissioner, 2nd Division, Agra.*

Letter from A. O. Hume, Esq., Collector of Etawah, to the Commissioner, 2nd Division, Agra, No. 180, dated the 10th June 1864.

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I HAVE the honour to request that you will, if you think fit, call the attention of the Board, and Government, to the extreme practical inconvenience, not to say injustice, attendant on the appellate jurisdiction provisions of Act X of 1859. as at present construed.

2. It is no exaggeration, I think, to say, that not one in ten thousand of the agricultural population, whose prosperity so much depends upon this law, can possibly understand these provisions. Nay more, I have never yet met a native attorney who had thoroughly realised their meaning.

3. Whether the appeal in any case ought to lie to the *Collector, the Judge,* or the *Commissioner,* and whether therefore a journey ought to be made to *Etawah, Mynpoory,* or *Agra,* is to the poor villagers of this district one of those inscrutable mysteries, that they deem it impossible for human reason to solve.

4. They consult an attorney, and he as often as not, gives them wrong advice; the subject is in practice complicated to a degree. A zemindar wishes to assess rent on certain land, and applies accordingly; his suit is heard under section 28 by the *Deputy Collector*—from his decision an appeal lies to the *Collector,* and from his, again to the Commissioner. All these processes only establish the fact of whether, or not, the land is *liable* to pay rent; if this be decided in his favour, he then sues again under clause 1, section 23, to have the amount of rent fixed; his case is again heard by the Deputy Collector, but this time there is *no* appeal to the *Collector* or *Commissioner,* the appeal lies to the *Judge.* The amount of rent fixed, and the tenant failing to pay, he sues again under clause 4 to recover the arrears. Now, if these do not exceed Rs. 100, his suit being heard by the Deputy Collector, as before, an appeal lies to the *Collector,* and from his decision there is no appeal, unless indeed any question of right to enhance or otherwise vary the rent of a ryot, or any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto has been decided by the judgment, in which case there will be *no* appeal to the *Collector,* the appeal lying to the *Judge.* If the amount exceeds Rs. 100, it is always the *Judge* to whom the appeal lies, unless the value of the matter in dispute exceeds Rs. 5,000, and then it is to the *Sudder.* If a decision in a matter of Rs. 99 is made by a Collector under clause 2, his order is final, but an appeal from an order by a Deputy, involving only 8 annas, under clause 3, relating to an almost precisely similar class of cases, must be preferred to the *Judge.* Again, if the zemindar *sues* to eject a ryot under clause 5, the appeal lies to the Judge, but if he *applies* to have a ryot ejected under section XXV, the appeal lies to *Collector* and *Commissioner,* and this too, though many cases are such that they may be heard indifferently under either clause 5, section 23, *or* section 25.

5. But it is needless to go on multiplying instances; the abstract statement of the case is sufficient to show how extremely involved the subject is. There are four Appellate Courts, to one or other of which parties dissatisfied with decisions of one kind or another, given under Act X of 1859, must resort, *viz.*, the Collector's, the Commissioner's, the Judge's, and the Sudder *Nizamut*; in some cases an appeal will lie to only one of these; in others to two successively; to ascertain to which of these recourse must be had, an equation involving 3 distinct variables, *viz.*, 1st, value of *re in liten*; 2nd class of suit; 3rd, nature of all rights or interests involved in decision, must be solved. I have been for years accustomed to attend closely to legal matters; I have from the first given special attention to the provisions and working of Act X, and yet, I am bound to acknowledge, that even I have repeatedly met with cases in which to the last, I had great doubts as to where the appeal ought, properly, to lie. What can we expect then from villagers or even the average of the attorneys who practise in our Courts?

6. To me it seems a standing reproach to our administration, that any part of a law like this, a law upon which the chief material interests of four-fifths of the population depends, should be thus needlessly complicated, and difficult of apprehension. If ever there was a law that ought to be clear, simple, and unmistakeable by the mass of the population, this is the one, but on the contrary there are assuredly no provisions of any law more unintelligible to the native public generally than those of Act X of 1859 relating to appeal.

Letter from A. O. Hume, Esq., Collector of Etawah, to the Commissioner, 2nd Division, Agra, No. 180, dated the 10th June 1864.

Leg. Proc., August 1865, Nos. 18—27.

No. 18.

7. I would earnestly entreat the Government, to submit to the Legislative Council some brief enactment to amend the existing state of things. The following will give some idea of the changes that I would recommend:—

I.—Whereas the existing provisions of Act X of 1859 and Act XIV of 1863 as regards appeals from orders and judgments passed under these laws, have led to great practical inconvenience, the following rules are enacted in lieu of the said provisions, hereby rescinded.

II.—Against every final order or judgment passed by a Deputy Collector in any suit, or in regard to any application preferred under any of the provisions of Act X of 1859 or Act XIV of 1863, an appeal shall lie to the Collector.

III.—If the value of the claim determined on (estimated according to any law for the time being in force for the valuation of suits) does not exceed Rs. 100, the Collector's order in appeal shall be final; where the value exceeds Rs. 100, but does not exceed Rs. 500, the Collector's order shall be appealable to the Civil Judge, but only when it reverses or modifies the order of the Lower Court. In all cases, where the value exceeds Rs. 500, an appeal shall lie to the Court of the Civil Judge.

IV.—Where orders, or judgments, as described in section 2, are passed, in the first instance by the Collector, they shall be final, provided the value of the claim as above explained shall not exceed Rs. 100; where the value of the claim exceeds Rs. 100, an appeal shall in all cases lie to the Court of the Civil Judge.

V.—Where the value of the claim exceeds Rs. 5,000, an appeal shall lie to the Sudder Nizamut Adawlut from the orders of the Civil Judge; in all other cases his orders shall be final.

VI.—The provisions of the Code of Civil Procedure for the time being in force in regard to appeals to be applicable to all appeals preferred under this Act—anything in any other Act to the contrary notwithstanding.

8. Something like the above the people absolutely require—this they can understand:—"Every order of a Deputy Collector to be appealed to Collector, every order of a Collector up to Rs. 100 final, ditto up to Rs. 500, if 'mutabik rae,' all other orders of Collector appealable to Judge. Judge's order up to Rs. 5,000 final, above that, appealable to the Sudder Nizamut Adawlut." Surely it is worth the while of Government to substitute simple intelligible rules like these for the complicated, and to them incomprehensible, ones that now bewilder our native agriculturists.

Minute by the Honourable E. Drummond, Lieutenant-Governor of the N.-W. Provinces, dated the 13th October 1864.

No. 19.

Minute by the Hon'ble E. Drummond, *Lieutenant-Governor of the North-Western Provinces, dated the 13th October 1864.*

In May 1863, the Board of Revenue submitted Minutes by the Members advocating the amendment of section VI, Act X of 1859, and further legislation in regard to the prescription established by that Act, upon grounds, which for the reasons given in my Minute, dated 25th July 1863, appeared to me to be insufficient, though I expressed an opinion that the Act was defective as regards providing the means for determining what was an equitable rate of rent, and I suggested the propriety of devising some scheme, similar to that in operation in Scotland, for the purpose.

The Board, in reply, forwarded Minutes from each of the Members of the Board, which rather affected the general question of rent, and of fair and equitable rates than that which was mooted by me, *viz.*, the periodical revision upon equitable principles, of the rates which at the time they were fixed had been admitted to be fair and equitable. Mr. Muir, however, in paragraphs 12 to 16 of his Minute, dated 11th August 1863, suggests a scheme which essentially secures the object I had in view, though by a different standard, *viz.*, by taking the existing rates of tenants-at-will as his datum instead of the general average price of corn, as I had proposed.

Under either plan, all that would be necessary would be the preparation by Settlement Officers of a reliable record of rights, in which the tenure of every cultivator, and the rates of rent, would be entered with consent of all parties, or by decree of the Settlement Officer after proper investigation, and these rates would remain unalterable in the case of ryots having prescriptive rights unless the proportion borne by them to the rates

paid by tenants-at-will at the time of settlement became deranged,—that relative proportion being at all times held to be a fair and equitable rate,—and a guide in all claims to enhancement.

Minute by the Honourable H. Drummond, Lieutenant-Governor of the North-Western Provinces, dated the 13th October 1864.

In May last the Board at the request of the Viceroy drew up a draft Bill, which is now resubmitted in an amended form, in amendment of Act X of 1859, based upon the Minutes above referred to.

Leg. Pros., August 1865, Nos. 18—27

Mr. Muir had also before him a Minute recorded upon the same subject by Sir B. Peacock, to which I have only recently had access.

No 19.

In all these papers the chief objection raised is to the establishment of a prescriptive right of occupancy at an equitable rent after 12 years—as provided by section VI. The remedy proposed by Sir B. Peacock is the repeal of sections VI and XVII,—that recommended by the Board is an extension of the term within which a prescriptive title can be acquired.

Of the two I greatly prefer the proposition of Sir B. Peacock—the repeal of the section would leave matters as they had previously stood, and existing rights would be maintained under the ordinary civil law. The Board's proposition only lengthens the term of prescription, and seems to me to be open to all the objections which have been brought against the Act as it now stands.

I adhere, however, to the opinion which I have already expressed upon this part of the subject. It appears to me that all that was given by Act X of 1859 to ryots not having a right of occupancy *at fixed rates* (or rates determinable upon fixed principles) was immunity from ejectment, or enhancement, so long as they paid a fair and reasonable rate of rent—and this immunity could in no way injure the landlord, seeing that under any circumstances he is only entitled to a fair and reasonable rent.

I consider this also to be in accordance with the custom of the country. Mr. Muir observes in paragraphs 37 to 39 of his Note dated 29th May 1863—

"On the 11th July 1856, the Board submitted the opinions received in reply, which showed a very general impression that 12 years' occupancy conferred at the least a *primâ facie* prescriptive right.

"The Board in this address accordingly proposed that so far as the summary Court of the Collector was concerned, the right of the proprietor to eject a tenant whose occupancy fell short of 12 years should be enforced: but not in respect of those who proved a longer occupancy. Similarly, if a ryot having been ousted, could prove an occupancy of 12 years, he was to be restored summarily by the Collector to possession.

"This was a satisfactory solution so far as the law then admitted; for the zemindar was still at liberty to repair to the Civil Court, and by a regular suit set aside a tenure even older than 12 years, if he could prove it to be non-hereditary. This privilege may have been difficult to enforce, because of the undefined nature of what constituted unhereditary title; still the knowledge that the point was open to review on its merits in the Civil Court, tended to prevent the rule of 12 years' occupancy being held an absolute and final test of prescription."

I think it must be obvious that if the summary process by which a ryot of 12 years' standing was maintained in possession until the zemindar by regular suit proved him to be only a tenant-at-will, was justifiable and a satisfactory solution of the question, then the enactment of section VI can scarcely be considered an objectionable innovation except perhaps so far as it may confer new rights upon mere tenants-at-will, and as regards them the landlord has the remedy in his own power by a resort to written contracts by which the accretion of any prescriptive right can be barred.

This part of the question cannot be rightly argued from a purely English point of view, which rests upon the ground of a full proprietary title in the landlord. The zemindar, it must be remembered, even under the permanent settlement, has not an absolute property in the soil; his tenure is subject to a rent charge, and the Government, who is the original proprietor, has an interest in the security and well-being of the ryot, inasmuch as if he absconded through ill-treatment, the loss might eventually fall upon the Government, upon whose hands an impoverished estate might be returned, and this interest was specifically guarded in the Regulations upon which the permanent settlement depends.

The error committed in the enactment of Act X of 1859, I conceive to have been that of attempting uniform legislation on a social question which

Minute by the Honourable E. Drummond, Lieutenant-Governor of the North-Western Provinces, dated the 13th October 1864.

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No. 19.

assumes a different aspect not only in every province, but almost in every district of each province according to local habits or customs, and which would have been much better left to adjust itself under the ordinary action of existing laws and of public opinion.

The Act was avowedly one intended for the protection of the ryot, and the cry which has been raised against it has been altogether in the interest of the landlords, but I am informed by those qualified to judge, that its effect in many districts of the North-Western Provinces has been wholesale enhancement of rents or ejectment of ryots who had a customary claim to occupancy, and who under the law as it previously stood would probably never have been molested.

Admitting, however, a great deal of what is urged as to the imperfection of the Act, it seems to me that it would be a measure of very doubtful policy to allow of any further change. The worst part of the mischief which can fairly be attributed to it has already been experienced. It would be neither just nor politic to deprive the ryots of rights already conferred upon them, and further change would only create renewed excitement.

All that seems to me necessary is the preparation of complete registers of all persons having any prescriptive right of occupancy, carefully prepared village by village as the settlements now in progress go on; and, as already observed, these registers would prove a sufficient guide for the decision of all future claims to enhancement.

Letter from R. Simson, Esq., Secretary to the Government of the North-Western Provinces, No. 1355 A., dated the 8th November 1864.

No. 20.

No. 1355A, dated Nynee Tal, the 8th November 1864.

From—R. SIMSON, Esq., *Secretary to the Government of the North-Western Provinces,*
To—*The Secretary to the Government of India,* HOME DEPARTMENT.

WITH reference to your letter No. 3006, dated 30th September last, relative to the proposed amendment of section 28, Act X of 1859, and of clause XIV, section 1 of Act XIV of 1859, I am directed to forward, for the information of His Excellency the Governor General in Council, the accompanying copy of a letter* from the Secretary to the Sudder Board of Revenue, containing the reply of the Board to paragraph 3 of your letter.

* No. 758, dated 20th ultimo.

2. His Honour's concurrence in the views expressed by the Board has already been stated.

Letter from W. C. Plowden, Esq., Secretary to the Board of Revenue, North-Western Provinces, No. 758, dated the 20th October 1864.

No. 21.

No. 758, dated Allahabad, the 20th October 1864.

From—W. C. PLOWDEN, Esq., *Secy. to the Sudder Board of Revenue, N.-W. Provinces,*
To—*The Secretary to the Government of the North-Western Provinces.*

I AM directed by the Board of Revenue to acknowledge the receipt of the communication from your office, No. 1288A, dated 15th instant, in the Revenue Department, requesting opinion on the subject of paragraph 3 of the orders of Government of India, therewith forwarded, No. 3006, dated 30th ultimo, relative to the amendment of section 28 of Act X of 1859, and clause XIV, section 1 of Act XIV of 1859.

2. In reply I am desired to state that the Board's proposed enactment, submitted with my No. 632, dated 9th September 1863—see concluding portion of paragraph 13—provided for the object touched upon in the paragraph referred to, in the following terms:—

> "Provided that uninterrupted rent-free possession for a period of sixty years, or rent-free possession for fifty years, including two successions, shall vest in the grantee or his representative, a proprietary right in the land included in the grant, &c."

This would produce precisely the title supposed by His Excellency the Viceroy and Governor General, *viz.*, a rent-free title as regards the grantee; but not a revenue-free title in respect of Government.

3. The Board proposed sixty and fifty years to correspond with the prescription proposed for the recognition of an ordinary mouroosee ryotee title; but the term is, of course, arbitrary and open to discussion.

No. 5836, dated the 25th November 1864.

From—A. P. HOWELL, Esq., *Offg. Under-Secy. to the Govt. of India*, HOME DEPT.,

To—*The Secretary to the Government of Bengal.*

Letter from A. P. Howell, Esq., Under-Secretary to the Government of India, No. 5836, dated the 25th November 1864.

Leg. Pros., August 1865, Nos, 18—27.

No. 22.

I AM directed to call the attention of the Lieutenant-Governor to the letter from this Department, No. 285, dated the 23rd May last, regarding the decision of the High Court in the case of Hills *versus* Isher Ghose under Act X of 1859, and to state that the Governor General in Council is anxious to receive, at an early date, an expression of the opinion of the Lieutenant-Governor on the reference therein made.

No. 4086, dated the 2nd December 1864.

From—S. C. BAYLEY, Esq., *Junior Secretary to the Government of Bengal*,

To—*The Under-Secretary to the Government of India*, HOME DEPARTMENT.

Letter from S. C. Bayley, Esq., Junior Secretary to the Government of Bengal, No. 4086, dated the 2nd December 1864.

No. 23.

IN acknowledging the receipt of your letter No. 5836, dated the 25th ultimo, I am directed to state, that the delay in replying to the reference* made by the Government of India in May last, is owing to the non-receipt from the Board of Revenue of the Report called for from them on the working of Act X of 1859, and the proposed amendments of the law. In a recent letter the Board informed this Government that the report would be submitted shortly. Their attention has been again this day called to the subject, and on receipt of the report no time will be lost in making the required communication from this office.

* No. 285.

No. 1719, dated the 22nd February 1865.

From—A. M. MONTEATH, Esq., *Under-Secy. to the Govt. of India*, HOME DEPT.

To—*The Secretary to the Government of Bengal.*

Letter from A. M. Monteath, Esq., Under-Secretary to the Government of India, to the Government of Bengal, No. 1719, dated the 22nd February 1865.

No. 24.

ADVERTING to your office letter of the 2nd December, No. 4086, and having special reference to this office letter No. 7001, dated 30th December, I am directed to request that you will be good enough to call upon the Board of Revenue to hasten the submission of the report which it was required to furnish, and that you will lose no time in replying to this office letter of the 23rd May last, No. 285.

No. I.

The relative rights of Zemindars and Ryots in Bengal.

Minute, No. I, dated December 1864, by the Honourable G. N. Taylor, on the relative rights of Zemindars and Ryots in Bengal.

No. 24a.

In dealing with this important question, the points to be first determined are,—How do these rights actually stand as regulated or declared by legislation down to the present day? What are the chief defects in the existing law? And, in order to remedy those defects, what legislative measures can now be adopted which shall not go beyond the scope of the original intentions of the Government and the Legislature on the subject.

If consideration for the public good were the only recommendation in favour of the measure, I should be reluctant to advocate compulsory legislation in a matter affecting private rights, though there might be no doubt whatever as to the *right* of Government to legislate under such circumstances. But the present is not a case of this description. At the time of making the Permanent Settlement in favour of the zemindars, the Government gave a solemn pledge that the rights of all classes of the ryots would be protected. Ever since then, constant efforts have been made with the object of redeeming that pledge, and it was hoped that this object had been ultimately attained by the enactment of Act X of 1859. But it is now admitted on all hands that this enactment, framed though it was with the greatest care and ability, and with the utmost consideration for the interests involved, has not adequately met the object for which it was intended; that the rights of the ryots remain in the same disturbed state as ever, and that the administration of justice is still hampered with innumerable lawsuits, which, from the want of a proper definition of rights, result in uncertain and contradictory decisions; so that the popular discontent continues to increase and in some directions has already led to serious results.

Minute, No. I, dated December 1864, by the Honourable G. N. Taylor, on the relative rights of Zemindars and Ryots in Bengal.

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The Legislature cannot ignore its responsibility for this state of things. The essential thing to be done under the circumstances is, first, to form definite and sound conclusions as to the nature of the pledge that was given; then, to consider what has been already accomplished and what still remains unperformed; and if any means are obviously required to supply what is wanting, it will not only be right and proper, but it will be the bounden duty of the Legislature to adopt them.

I propose in the first place to refer to the views and opinions of the original authors of the Permanent Settlement upon the matter at issue.

The Minute* of Mr. Shore (afterwards Lord Teignmouth), dated 10th June 1789, published in the Appendix to the Report of the Select Committee of the House of Commons, on the affairs of the East India Company in 1812, gives at considerable length the result of his researches into the condition and rights of the ryots as they existed before the Permanent Settlement. It is remarkable that both in this Minute as well as in his subsequent† Minute of the 8th December 1789, there is throughout an evident struggle to reconcile, to his own satisfaction, what he conceived to be a singularly confused state of things. He observes in the latter Minute:—

* See particularly paras. 216 to 531, portions of which are appended to this paper for convenience of reference.

† Paras. 10 to 16 also appended.

"The relation of a zemindar to Government, and of a ryot to a zemindar, is neither that of a proprietor nor a vassal, but a compound of both. The former (the zemindar) performs acts of authority unconnected with proprietary right, the latter (the ryot) has rights without real property."

The confusion evidently arose from mistaking the zemindars, who were simply the hereditary *renters or managers of the Government revenue* from the land, for the *proprietors of the soil* in the English sense of the term.

But the position of the ryot in regard to the revenue, or rent as it is erroneously called, payable on the land cultivated by him, is thus described by Mr. Shore as a matter of fact:—

Paras. 391 and 392, Minute of June 1789.

"In every district throughout Bengal, where the license of exaction has not superseded all rule, the rents of the land are regulated by known rates called *nirik*, and in some districts, each village has its own; these rates are formed with respect to the produce of the land at so much per beegah; some soil produces two crops in a year of different species, some three; the more profitable articles, such as the mulberry plant, betel-leaf, tobacco, sugarcane, and others render the value of the land proportionably great.

"These rates must have been fixed upon a measurement of the land, and the settlement of Turymull may have furnished the basis of them. In the course of time, cesses were superadded to that standard, and became included on a subsequent valuation, the rates varying with every succeeding measurement. At present there are many abwabs or cesses collected, distinct from the *nirik*, and not included in it, although they are levied in certain proportions to it."

Again, in another place, he made the following observations on the same subject:—

Paras. 30 to 33 idem.

"The principles of Mogul taxation, as far as we can collect from the Institutes of Timor and Akbar, from the ordinations of the emperors, and the conduct of their delegates, however limited in practice, were calculated to give the sovereign a proportion of the advantages arising from extended cultivation and increased population. As these were discovered, the Timor or standard assessment was augmented, and whatever the justice or policy of the principle might be, the practice in detail has this merit, that it was founded upon a knowledge of real and existing resources.

"In conformity to these principles, inferior officers were stationed throughout the country, to note and register all transactions relating to the soil, its rents, and its produce; every augmentation of cultivation was required to be recorded, as well as every diminution in its quantity.

"An increase of revenue exacted from a zemindar under these circumstances, affected his profits, but made no alteration in the rates upon the ryots; he paid a portion of the rents arising from discovered improvements in his lands; but the cultivators of the soil were not by this demand exposed to an enhancement of their rates. The excess claimed augmented the Timor or standard assessment, which, by the investigations of Jaffer Khan, was raised in the sum of Rs. 11,72,279."

Lord Cornwallis, however, in reply to Mr. Shore's objections to a Permanent Settlement, treats the subject in somewhat clearer terms. He recognises distinctly the right of the ryots to hold the land upon an established rent, and points out that the rents or income of the zemindars can only be

Minute of 3rd February 1790, page 486, Appendix to 5th Report of Select Committee.

raised by the cultivation of waste lands, or by improvements calculated to bring more valuable articles of produce under cultivation:

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"I agree with Mr. Shore that some interference on the part of Government is undoubtedly necessary for effecting an adjustment of the demands of the zemindars upon the ryots; nor do I conceive that the former will take alarm at the reservation of this right of interference, when convinced that Government can have no interest in exercising it but for the purposes of public justice. Were the Government itself to be a party in the cause, they might have some grounds for apprehending the result of its decisions.

"Mr. Shore observes that this interference is inconsistent with proprietary right; that it is an encroachment upon it, to prohibit a landlord from imposing taxes upon his tenant; for it is saying to him, that he shall not raise the rents of his estates; and that if the land is the zemindar's, it will only be partially his property, whilst we describe the quantum which he is to collect, or the mode by which the adjustment is to take place between the parties concerned.

"If Mr. Shore means that after having declared the zemindar proprietor of the soil, in order to be consistent we have no right to prevent his imposing new abwabs or taxes on the lands in cultivation, I must differ with him in opinion, unless we suppose the ryots to be absolute slaves of the zemindars; every beegah of land possessed by them must have been cultivated under an express or implied agreement that a certain sum should be paid for each beegah of produce, and no more. Every abwab or tax imposed by the zemindar over and above that sum is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator, therefore, has in such a case an undoubted right to apply to Government for the protection of his property; and Government is at all times bound to afford him redress. I do not hesitate, therefore, to give it as my opinion that the zemindars neither now nor ever could possess a right to impose taxes or abwabs upon ryots; and if, from the confusions which prevailed towards the close of the Mogul Government, or neglect, or want of information, since we have had the possession of the country, new abwabs have been imposed by the zemindars or farmers, that Government has an undoubted right to abolish such as are oppressive, and have never been confirmed by a competent authority; and to establish such regulations as may prevent the practice of like abuses in future.

"Neither is the privilege which the ryots in many parts of Bengal enjoy, of holding possession of the spots of land which they cultivate, so long as they pay the revenue assessed upon them, by any means incompatible with the proprietary rights of the zemindars. *Whoever cultivates the land, the zemindar can receive no more than the established rent*, which in most places is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression, from which he could derive no benefit. The practice that prevailed under the Mogul Government, of uniting many districts into one zemindari and thereby subjecting a large body of people to the control of one principal zemindar, rendered some restriction of this nature absolutely necessary. The zemindar, however, may sell the land; and the cultivators must pay the rent to the purchaser.

"Neither is prohibiting the landholder to impose new taxes or abwabs, on the lands in cultivation, tantamount to saying to him that he shall not raise the rents of his estates. The rents of an estate are not to be raised by the imposition of new abwabs or taxes on every beegah of land in cultivation; on the contrary, they will, in the end, be lowered by such impositions; for when the rate of assessment becomes so oppressive as not to leave the ryot a sufficient share of the produce for the maintenance of his family and the expenses of cultivation, he must at length desert the land. No zemindar claims a right to impose new taxes on the land in cultivation, although it is obvious that they have clandestinely levied them, when pressed to answer demands on themselves; and that these taxes have, from various causes, been perpetuated to the ultimate detriment of the proprietor who imposed them.

"The rents of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste land which are to be found in almost every zemindari in Bengal.

"In support of the opinion which I expressed upon a former occasion respecting the large proportion of waste land in the Company's territories, I have annexed some extracts from the correspondence of the Collector in the Dacca Province, &c., and whoever will take the trouble to consult the public proceedings, will find there are many districts, both in Bengal and Behar, which are not better cultivated than those alluded to in letters of the abovementioned Collector. It requires no local knowledge of the revenues of this country to decide whether fixing the assessment, or leaving it liable to future increase, at the discretion of Government or its officers, will afford the greatest encouragement to the landholder to have recourse to these means for the improvement of his estate.

"It does not appear to me that the regulations for the new settlement confirm all existing taxes, if, upon inquiry, they shall appear to be unauthorised and of recent imposition, nor that the zemindars will be entitled to deductions upon the abolition of them."

Such were the views of the rights of the cultivating ryots held by the actual author of the Permanent Settlement when urging the measure upon the Home Government.

The Court of Directors, in their despatch to the Bengal Government, of the 19th September 1792, approving of a Permanent Settlement in favour of

Minute No. 1, dated December 1864, by the Honourable G. N. Taylor, on the relative rights of Zemindars and Ryots in Bengal.

Leg. Pros., August 1865, Nos. 18—27.

No. 24a.

the zemindars, make the following remarks on the subject of the rights of the cultivators :—

"We therefore wish to have it distinctly understood, that while we confirm to the landholders the possession of the districts which they now hold, and subject only to the revenues now settled, and while we disclaim any interference with respect to the situation of the ryot, or the sums paid by them, with any view to an addition of revenue to ourselves, we expressly reserve the right which clearly belongs to us, as Sovereigns, of interposing our authority in making, from time to time, all such regulations as may be necessary to prevent the ryots being improperly disturbed in their possession, or loaded with unwarrantable exactions. A power exercised for the purposes we have mentioned, and which has no view to our own interests except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders; and instead of diminishing, will ultimately enhance the value of their proprietary rights. Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined; and that it was not left to the arbitrary determination of the zemindar; for otherwise such a rule would be nugatory; and in point of fact the original amount seems to have been annually ascertained and fixed by the Act of the Sovereign."

It will here be convenient to examine briefly the provisions and effect of the enactments of 1793 and of the Regulations passed in subsequent years in connection with the Permanent Settlement.

Regulation I of 1793 enunciates the general principles of the measure.

The grievous mistake which runs through the language of this and all the other Regulations having reference to the Permanent Settlement, is that the zemindars are called *proprietors of the soil*, their zemindaris are called their *landed estates* in the cultivation of the lands of which they are exhorted to exert themselves, and the assessment or revenue paid to them by the ryots is called their *rent*, as distinguished from the peshkash payable by the zemindar to Government, which is called the *public revenue*.*

* See paragraphs 54 and 63 of Court's Despatch, dated 15th January 1819, quoted further on.

But it is obvious that the use of this erroneous phraseology could convey to the zemindars no higher right to the soil than they already possessed, and could, under no circumstances, supersede the distinct and indefeasible right which belonged to the ryots by the Common Law of India, and from immemorial custom, to hold their lands upon fixed terms of rent. By the Permanent Settlement the right of the zemindars, which had previously depended upon the discretion of the ruling power, was made absolute and capable of transfer at will, and the value of the right was greatly enhanced by the permanent limitation of the claims of the Government to revenue. But the right was in the main nothing more than the hereditary right to the collection and management of the land revenue.

The settlement necessarily transferred to the zemindars the control over the waste lands previously vested in the Government, and made over to them absolutely and for ever, in prospective right, the private lands attached to the zemindari office under the name of nankar, khamar, nij-jote, described in section 31, Regulation VIII of 1793.

But as regards the whole of the other lands within the zemindari, the interest of the zemindar was limited by the right of the ryots to hold their lands at fixed rates or fixed terms of rent, as described in the extracts given above, and as provided by the Permanent Settlement Regulations, as I proceed to show.

The preamble to Regulation II of 1793 describes to some extent what was the real nature of the zemindar's right previous to the Permanent Settlement. Referring to the public demand, it says—

"The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the ryots or tenants for each beegah of land in cultivation, of which, after deducting the expenses of collection, ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder. Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm, or collected by an officer of Government, and the above-mentioned share of the landholders, or such sum as special custom or the orders of Government might have fixed, was paid to him by the farmers or from the public treasury."

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Section 8, Regulation I of 1793, reserves to the Government in general terms the right to enact such Regulations as may be necessary for the protection and welfare of the dependent talukdars, ryots, and other cultivators of the soil.

Regulation VIII of 1793, passed on the same day with Regulation I, contains provisions for the regulation of the various subordinate tenures. Those of the talukdars, istimrardars, &c., which are all dependent on special contract, are specially provided for, but the tenure of the ryots, which was derived from immemorial custom, was reserved for future legislation. There are, however, some special provisions on the subject which are important.

Section 54 requires the zemindars to revise, in concert with the ryots, the impositions denominated abwab, mahatoot, &c., and to consolidate the whole with the *asal* or original settlement into one specific sum.

Section 55 prohibits any new cesses being imposed.

Sections 56 and 57 provide for the customary rents payable by the ryots, whether on the produce or on the land, being specified in the pottahs to such extent as their various terms admitted of specification, and further express the desire of Government that the proprietors should in time commute the rents fluctuating with the produce into a specific sum.

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Section 60 enacts that leases to under-farmers and ryots existing at the time of the Permanent Settlement should be respected, and that the pottahs of the khoodkhast ryot should not be cancelled, except on proof of collusion, or the rent being lower than the *nicka-bandi* of the pergunnah, or upon the general measurement of the pergunnah for the purpose of equalising and correcting the assessment.

Regulation XLIV of 1793 provided that no leases or pottahs were to be given for a term exceeding 10 years (section 2), and that all engagements with the ryots were to terminate in the event of the public sale of the estate for arrears (section 5). But these provisions, as is clear from the preamble, were intended rather to prevent the proprietors from giving lands upon low rents than to infringe the customary right of the ryots. Accordingly, section 5, above quoted, also Regulation IV of 1794 (sections 6 and 7), provided that when pottahs shall expire or become cancelled under Regulation XLIV of 1793, no proprietor shall require the ryots to take out new pottahs at higher rates than the established rates of the pergunnah for lands of the same quality and description.

Subsequently, Regulation V was enacted, and empowered proprietors to grant leases for any period, even in perpetuity, and at any rent which they might deem conducive to their interests. This has been erroneously supposed to authorise zemindars and proprietors to impose what rents they pleased, irrespective of the right of the ryots. But as these regulations were subject to the provisions of section 6, Regulation IV of 1794, which then remained uncancelled, and which enabled ryots, if they disputed the rent, to obtain a decision in the Court at the pergunnah rates, the fair and proper conclusion to be drawn is that the object of those regulations was simply to enable the zemindars and ryots to agree by mutual consent to any terms of rent, however low, which might be preferred by the ryots to the established pargana rates, to which they had a right to appeal if they demurred to the terms offered by the zemindar. In point of fact, however, the powers conferred on the zemindars to levy summarily any enhanced demand, leaving only to the ryots the slow and uncertain remedy of a suit in the Civil Courts under section 6 of Regulation IV of 1794, placed it entirely in their hands to raise their rents at will. Again, the 5th clause of section 29 of Regulation VII of 1799, enabled the purchasers of a zemindari at public auction for arrears of revenue to eject, without previous application to a Court, any of the under-renters whose leases were annulled. But this provision, which proved a further instrument of oppression in the hands of the zemindars, was afterwards rescinded by Regulation XI of 1822.

The oppression to which the ryots were practically left under the Permanent Settlement was forcibly described in a Minute of the Governor General, the Marquis of Hastings, then Lord Moira, dated 25th September 1815. He says—

See page 114, Appendix to Report of Select Committee III, Revenue, of 1832, paragraphs 138 to 148.

"The situation of the village proprietors in large estates, in farms and jagheers, is such as to call loudly for the support of some legislative provision. This is a question which has

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not merely reference to the Upper Provinces; for within the circle of the Perpetual Settlement, the situation of this class is yet more desperate, and though their cries for redress may have been stifled in many districts by their perceiving that uniform indisposition to attempt relieving them which results from the difficulty of the operation, their sufferings on that account have not been less acute."

A few years later, the whole subject was clearly and carefully reviewed by the Court of Directors in a Despatch, dated 15th January 1819, the whole of which is well deserving of attentive perusal, and in which the Court urge upon the Indian Government the necessity of adopting measures for the clear settlement of the rights of the ryots.

The few following extracts from that Despatch will sufficiently show what were the views and sentiments of the Home Government of that day in regard to the intention and spirit of the Permanent Settlement Regulations; and how great was their anxiety to remedy the evils and to correct the errors and confusion to which the erroneous phraseology of the Regulations had given rise:—

(*Letter from Court of Directors, dated* 15*th January* 1819.)

Para. 23.—Mr. Cornish states—"the ryots conceive they have a right to hold their lands so long as they pay the rent which they and their forefathers have always done. The zemindars, although afraid openly to avow, as being contrary to immemorial custom, that they have a right to demand any rent they choose to exact, yet go on compelling them to give an increase, and the power of restraint, vested in them by the Regulation, soon causes the utter ruin of the existing ryot."

28. His Lordship (Marquis of Hastings) adds:—"It is well known (and even if it were questionable, the practice of the Provinces which have lately fallen under our dominion would set the doubt at rest,) that the cultivating zemindars were, by a custom more ancient than all law, entitled to a certain share of the produce of their lands, and that the rest, whether collected by pergunnah zemindars or by the officers of Government, was collected as the huq of the Sircar."

* * * * * *

31. (*Concluding sentence.*)—"The difficulties to be encountered in the pursuit of minute local investigations, deterred Lord Cornwallis from a task, to the undertaking of which, it must be confessed, the sentiments and instructions of the Court of Directors had been unfavourable, from the time of Mr. Hastings to their Despatch, 12th April 1786, on the subject of the decennial settlement.

32. "Mr. Shore, though fully sensible of the difficulty of simplifying and defining the rates of assessment on the ryots, was decidedly of opinion that the Government should first see this accomplished before they entered into any permanent engagements with the zemindars, 'in order,' as he said, 'that justice might be impartially administered according to fixed rules.'

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49. (*Concluding remarks.*)—"It was avowedly with much reluctance that Mr. Colebrooke suggested the adoption of this alternative (the abrogation of all laws in favour of the ryot by way of putting an end to dispute), for he immediately added: "If it be thought expedient, in place of abrogating the laws which were enacted for the protection of the tenantry, and especially of the khoodkhast ryot or resident cultivator, that the right of occupancy, which these laws were intended to uphold, should be still maintained, and that the ryot should be supported in his ancient and undoubted privilege of retaining the ground occupied by him, so long as he pays the rent justly demandable for it, measures should be adopted, late as it now is, to reduce to writing a clear declaration and distinct record of the usages and rates according to which the ryots of each pergunnah or district will be entitled to demand the renewal of their pottahs, upon any occasion of a general or partial cancelling of leases."

* * * * * *

54. "In the consideration of this subject it is impossible for us not to remark that, consequences, the most injurious to the rights and interests of individuals, have arisen, from describing those with whom the Permanent Settlement was concluded, as the *actual proprietors of the land*. This mistake (for such it is now admitted to have been), and the habit which has grown out of it, of considering the payment of the ryots as rent instead of revenue, have produced all the evils that might be expected to flow from them. They have introduced much confusion into the whole subject of landed tenures, and have given a specious colour to the pretensions of the zemindars, in acting towards persons of the other classes as if they, the zemindars, really were, in the ordinary sense of the words, the proprietors of the land, and as if the ryots had no permanent interest but what they derived from them.

* * * * * *

62. "It is fortunate, however, and must not be forgotten, that in the same Regulation in which the Bengal Government, in 1793, conferred rights upon the zemindars, apparently inconsistent with the rights of the cultivators of the soil, it reserved to itself the full power of passing such laws as, from time to time, might appear necessary for the protection of the rights acknowledged to be vested in the ryots.

63. "There can be no doubt that a misapplication of terms, and the use of the word "rent," as applied to the demands on the ryots, instead of the appropriate one of "revenue," have introduced much confusion into the whole subject of landed tenures, and have tended to the injury and destruction of the rights of the ryots.

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66. "The differences which have arisen, under the Permanent Settlement, between the zemindars and ryots, the arbitrary exactions of the more powerful, the fraudulent evasions resorted to by the weaker classes, and the vexatious litigations which have been the consequence of this state of things, afford sufficient evidence that it is our duty, before any definite system is adopted for provinces not yet finally settled, to investigate most attentively the evils to which the Permanent Settlement has given rise, to examine the nature and degree of the change in the relative situations of the zemindar and the ryot which has taken place under its operation, and to ascertain as nearly as possible what were the previously existing rights with which it has either improvidently or unadvisedly interfered."

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The matter engaged attention for a few years, but without any definite measures being determined upon. A draft regulation, avowedly framed for the protection of the ryots, was prepared by Mr. J. H. Harington, in 1827, which is still useful for reference as containing a review of the bearing and effect of all previous legislation on the subject. In the last paragraph of this draft it is provided that in the event of a zemindar neglecting to adjust the rents of the ryots as required by the Regulation, the executive Government was to order measurement and executive jamabandi to be made and pottahs granted to the ryots by the Revenue authorities. This draft, however, never became law, having been strongly opposed by the Judges of the Sadr Diwani Adalat, who were in favour of what is called the proprietary right of the zemindar. The chief defect of this draft seems to be that there was nothing new explained, and that in fact no clearer definition was attempted of the tenures of the ryots than that contained in the previous regulations.

Thus ended the question for the time, the only expedient adopted on the recommendation of the Home Government for the protection of the ryots being the purchase of the zemindaris on account of Government when they came to sale.

However erroneous the wording of the early regulations may have been, it is clear that the spirit of the Government enactments was in general favourable to the rights of the ryots, and as the Government of Bengal observed in 1822, "there was nothing to disavow and nothing to undo." But the provisions of the law were too general and indefinite to enable a Court to come to any sound and practical decision in cases brought before it. It was provided that the ryots had customary rights requiring protection, and it was also provided that those rights enabled them to hold their lands hereditarily so long as they continued to pay the established rates of rent determined by custom, quite independently of the arbitrary will of the zemindar. But in the first place no definition was given as to what classes of ryots are entitled to these rights, and in the second place no measures were adopted to ascertain and record the pergunnah rates which, under a system which made over the village patwaris to the zemindars, were no longer easily obtainable, and rendered every successive attempt to record them more and more hopeless. Mr. Shore indeed had advocated the necessity of fixing the maximum rates of the public revenue payable by the cultivators to the zemindar, at those actually assessed when the Permanent Settlement was introduced, including all illegal cesses then existing; but he was overruled, and the local pergunnah rates, undefined and unrecorded as they are to this day, were preferred.

The circumstances of the ancient zemindari tenures of the Northern Cirkars and other permanently-settled districts of the Madras Presidency were in every way precisely similar, and the Permanent Settlement Regulations, which were for the most part copied from those of Bengal, adopted the same erroneous phrasecology, and contained nearly the same provisions in regard to the relative rights of zemindars and ryots. But the circumstance which saved the Madras ryots was, that, while as regards Bengal the Regulations looked for the standard of the adjustment to the pergunnah rates, which were never ascertained and never registered, the Madras Regulations (XXX of 1802, section 9) adopted as the maximum rent demandable from the ryots the specific rates prevailing in the cultivated lands, *in the year immediately preceding the settlement of the permanent jamma*, which were all duly recorded in the accounts, and have

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been preserved to this day by village accountants responsible to Government. The condition of the ryot in the Madras zemindaris is, no doubt, as a rule greatly inferior to that of the ryots in the Government ryotwari districts, in which under fixed money assessments the ryots have the strongest inducement to improve their property. In the zemindaris, on the other hand, the villages are for the most part rented out either to the headmen or to strangers, with whom the ryots share the crops, a system which offers little incentive to industry, and exposes the ryots to many acts of oppression, which are easily practised by the servants of the zemindars. So long, however, as there is a specific maximum rate of assessment, in whatever terms it may be fixed, to limit the claims of the zemindars, the ryots leave a property in the land which is worth holding, and both parties are compelled to enter into such engagements in regard to rent as are practically for their mutual advantage.

But to return to Bengal. So long as prices continued low, and the absence of competition, together with a comparatively limited trade, kept down the value of landed property, the ryots had little to lose under the system which prevailed; nor had the zemindars much to gain by dispossessing them of their lands. But when high prices consequent on the increasing demand for Indian produce, and the rapidly growing activity of commerce had given a fresh stimulus to industry and an additional value to land, the real grievances of the system began to be felt; rights which had long been dormant, but never entirely extinguished, were asserted on all sides, and a general discontent resulted, giving rise to increased litigation and frequent disturbances, which at length eventuated in the enactment of Act X of 1859.

Having now reviewed the course of legislation on this important subject, from the period of the Permanent Settlement to the present day, it remains to consider to what extent the latest enactment, Act X of 1859, supplies the two acknowledged defects of the earlier Regulations above referred to. Does it in fact clearly and satisfactorily dispose of these two questions?

First.—What classes of ryots are entitled to rights of property in land; and, *secondly*, how these rights are to be definitely determined?

As regards the first point, the following are the provisions made in the Act. Section III provides that ryots holding lands at fixed rates of rent from the time of the Permanent Settlement are entitled to receive pottahs at those rates; and under Section IV, 20 years' enjoyment at a fixed rent is proof of the existence of such a right from the Permanent Settlement, unless the contrary is proved. These provisions, so far as they go, are clearly fair. The rights provided for are those resulting from a specific enactment, *viz.*, section 49 of Regulation VIII of 1793, and the facility of proof allowed to the ryot is no more than was necessary under a system which made over the village accountants to the zemindars or proprietors, and thus rendered the accounts difficult of access to the ryots.

But the more general and important declarations of the new Act are those contained in sections 5, 6, and 7, under which occupancy by a ryot for 12 years gives him a right to hold the land for ever, subject to fair and equitable rates of assessment determinable quite independently of the arbitrary will of the zemindars, unless contrary stipulations were expressly made in written contracts entered into for the cultivation of the lands.

In reference to these provisions, doubts have been entertained in high quarters as to whether the sections in question were intended to apply to holdings which existed at the time of the passing of the Act, or to future as well as to prior holdings; and it has been held that, unless based upon an ancient hereditary tenancy commencing before the Permanent Settlement, the right of occupancy in question must be regarded as being newly created by the Act—a conclusion which follows from the assumption that, subsequent to the Permanent Settlement, all subordinate rights must be derived from contract, or from laws and regulations specifically enacted as distinguished from custom.

These views contain the fallacy—if I may be allowed the expression—which led to a decision of the High Court in the Hills case so contrary to what appear to me to have been the clear intentions of the Legislature.

The ordinary right of the ryots to hold their lands on payment of a certain proportion of the produce, or of the usual pergunnah rates, is, by the immemorial custom of the country, derived from the mere act of settlement, and is

confirmed by length of occupancy quite independently of all contract; and there is no limitation of time to be found anywhere in regard to the creation of such right, nor can any such restriction have been placed by the terms of the Permanent Settlement entered into between the Government and the zemindars to which the ryots were no parties.

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Special rights to hold lands on fixed rents are only valid, if they existed at the time of the Permanent Settlement, and are accordingly thus specially provided for in sections 49 and 60 of Regulation VIII of 1793. But the ordinary right to occupy lands at the ordinary rates being dependent upon custom and prescription, is not restricted to any limit of time, and no such limit is consequently imposed by sections 54, 55, 56, and 57 of Regulation VIII of 1793, or by sections 6 and 7 of Regulation IV of 1794, which regulated the customary tenures of this description.

Ryots possessing the right of hereditary occupancy from before the Permanent Settlement, or their successors, may subsequently extend their cultivation to new lands in their village, and there is nothing either in law or custom to support the notion that their rights in the lands newly broken up, differ in any respect from their rights in their former holdings.

Further and similarly there are no grounds to warrant any distinction being made in respect of the rights of new comers, who have been allowed to settle permanently in the village, and, by length of time, have acquired rights of occupancy in the same manner as the old hereditary occupants did before them.

As regards the zemindar, except in respect to his private lands, sir, nij-jote, or by whatever term known, he has, by the universal custom of the country, a primary right only to the ordinary *revenue* from the other lands of his estate, and not to the lands themselves. By the accidental circumstances of his position, as manager of the land revenue, he may and does in fact acquire a control over the waste lands, and when, as is universally the case I believe in Bengal, there is no mirasi right involved, he has the power to appropriate them to himself, or to give them to others on any terms he may consider to be for his advantage. But unless he does so under a specific contract with the parties to whom the lands are given, the occupation of new lands by the ryots of the village in the ordinary course is, by the Common Law of India, subject only to the customary rates of assessment. The so-called proprietary right of the zemindars is not absolute, but limited by the separate rights possessed in the lands by the ryots as recognised by the Permanent Regulations themselves. The argument, therefore, that the rights of the ryot can be derived only from contracts entered into with the proprietors, cannot be sustained. It appears to me to be unquestionably the correct view that the right of the zemindar, whether in Bengal or elsewhere, under the Permanent Settlement Regulations, to other than to customary revenue from the land, can only be upheld by special stipulations in the contracts entered into with the ryots.

Mr. Shore in paragraphs 406 and 407 of his Minute of June 1789, from which I have already quoted, observes that "pottahs to khoodkhast ryots, or those who cultivate the land of the village where they reside, are generally given *without any limitation of period*, and express that they are to hold the lands paying the rents from year to year: hence the right of occupancy originated." and he further adds that "pottahs to pyekhast ryots or those who cultivate the land of a village where they do not reside, are generally granted *with a limitation in point of time*."

Mr. Thomason, than whom there is no higher authority on the land tenures of the North-West Provinces, even went beyond this, and held that residence in the village was not a necessary condition of the privilege of occupancy. In his Directions to Settlement Officers, he states "those who have for a course of years occupied the same field at the same or at equitable rates, are held to possess the right of continued occupancy, whilst those whose tenure is not *similarly sanctioned* are considered tenants-at-will." Mere lapse of time constitutes the prescriptive sanction, the village community being of course perfectly well aware of the circumstances under which every outsider was admitted and every field occupied. And although Mr. Thomason considered that in practice it was not difficult to draw the line between those who, with the tacit consent of the community, had acquired the prescriptive right of occupancy, and those who are mere tenants-at-will, he nevertheless proposed, in order to

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prevent disputes and litigation, that uninterrupted occupancy at the pergunnah or at lower rates for the very term prescribed by Act X, *viz.*, 12 years, should become occupancy by prescription.

For these reasons, I am of opinion that the provisions of Act X of 1859 are based on sound principles, and that they adequately supply, as regards Bengal, one of the great wants of the earlier Regulations, namely, a precise definition of the ryots' tenure.

As I have before observed, the same state of things prevails in the zemindaries of the Madras Presidency, where ryots in general are recognised as having the right of occupancy in the lands cultivated by them. Any right of a higher description than this, such as the mirasi right of the Deccan and of some of the Southern Provinces in the Carnatic, which is supposed to carry with it various other privileges besides the possession of the cultivated lands, must be specially established on the part of the ryots or village proprietors; whilst, on the other hand, it is equally incumbent upon the zemindar to establish by proof of especial agreements or limitations arranged by both parties, that in any case the ryots hold lands simply as tenants-at-will. I am therefore clearly of opinion that in respect to this point, legislation has already done enough, and that the provisions of Act X of 1859, which define the ryots' tenure, should not be disturbed.

The second question, namely, the determination of the customary rate, is one that cannot be settled by legislation alone; it requires careful enquiry followed by a complete registration conducted by officers duly commissioned for the purpose. It is scarcely to be wondered at that the provisions of Act X of 1859 upon this head have failed to afford any real remedy. Under the early regulations, the pergunnah rates were in reality a dead letter, because they were never correctly ascertained; but Act X of 1859 simply introduced another element of doubt. It gave to the zemindar a right to enhance his demand if the value of the produce or the productive powers of the land had been increased otherwise than by the agency or at the expense of the ryot, but it left undefined whether the whole or what portion of such increase was to be taken by the zemindar. Take the case of an increase resulting from improved irrigation supplied at the expense of the zemindar, as compared with increased returns owing to a general rise in prices, it is obvious that the zemindar's claim to the enhancement in the former case would be considerably higher than in the latter. Such points, involving the principles upon which enhancement ought to proceed, require to be first satisfactorily determined by the Legislature before the Courts can be called upon to apply them to individual cases.

But the judgment of the High Court in Hills' case goes, in my humble opinion, even beyond what the vagueness of Act X would justify, and enunciates a doctrine which is full of danger and injustice to the whole body of occupancy ryots. Proceeding on the incorrect assumption that the zemindars are absolute proprietors of the soil to the annihilation of all subordinate rights, and assuming also that the Legislature have wrongly *created* rights of occupancy on the strength of 12 years' possession, the Court virtually ignored those rights altogether by declaring that a fair and an equitable rent, within the meaning of the Act, is the highest rent that a zemindar could obtain by selling the lands to others by competition.

This ruling, as will be obvious from what has gone before, is in direct violation of the principles admitted by all previous authority on the subject, and is contrary to the express provisions of the regulations, which limit the zemindar's claim, as against the occupancy ryots, to certain established rates, which limitation in fact constitutes the right of the cultivating class. If the rent payable by the ryot is to be settled by competition, he possesses no higher right in the land than a stranger or a foreigner.

Throughout the regulations the pergunnah rates are held to be the standard assessment applicable to ryots having the hereditary right of occupancy, But what was omitted to be done at the early period when those regulations became law, and what now requires to be supplied, is to determine what those rates are and to register them. Such registration can only effectually be made by a local commission conducting their investigations on the spot, and assisted by a survey of the lands, in order that there may be no uncertainty in the application of the rates. But the principles according to which the rates are to be determined must be defined by the Legislature.

In the first place it must be kept in mind that attempts with this object were made in former years, but difficulty was experienced in obtaining the requisite data from the accounts.

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Should this prove still to be the case, it must be provided that, as formerly proposed by Mr. Colebrooke,* the rate should be fixed as near the established ones as can be ascertained upon a fair enquiry into the usages of the village and those of the adjoining villages under similar circumstances. The absence of a trustworthy record of the pergunnah rates cannot defeat the right of the ryots to obtain such equivalent rates as are capable of being fixed after fair investigation.

* *Paragraph 24, Court's Despatch, 15th January 1819.*

"Mr. Colebrooke asserts from his own experience that disputes between zemindar and ryots, in the Lower Provinces, were less frequent, and were easily determined anterior to 1793 than they now are; and he further states that the provisions contained in the general regulations for the permanent settlement, designed for the protection of the ryots or tenants, are rendered wholly nugatory, and that the Courts of Justice, for want of definite information respecting their rights, are unable effectually to support them I am disposed, therefore, he adds, to recommend that, late as it now is, measures should be taken for the establishment of fixed rates, as nearly conformable to the anciently established ones as may yet be practicable to regulate distinctly and definitely the relative rights of the landlord and tenantry."

The next and still more important principle requiring determination is, whether the pergunnah rates prevailing at the time of the Permanent Settlement are to be considered fixed, or whether they admit of an increase under any circumstances. By the universal custom of the country, the claim of Government to revenue from the immediate cultivators of the land was limited to a certain proportion of the produce, or to a certain standard assessment in money which was usually considered to be fixed; and though it was in the power of the sovereign authority to make additions to the tax in the shape of abwabs or cesses under various pleas, such measures were always regarded as acts of despotism not consistent with the principles of a just Government.

The question, however, must be decided by more immediate reference to the bearing and intent of the Permanent Settlement Regulations.. By the Madras Regulations, as I have already explained, the claim of the zemindar was limited to the specific rate of assessment prevailing in the year before the Permanent Settlement; and though the Bengal Regulations refer to a more general pergunnah rate as the standard assessment, that rate was obviously considered to be fixed. Clause 2, section 60, of Regulation VIII of 1793, only contemplates a future equalisation and correcting of the assessment, but does not give room for any enhancement. On the contrary, Lord Cornwallis, referring to this subject, observes definitely enough that the "rents of an estate are not to be raised by the imposition of new abwabs or taxes on every beegah of land in cultivation," but "by inducing the ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste lands." Following this principle, Regulation VIII of 1793 provides for the consolidation of the existing abwabs, and prohibits the imposition of new ones; and as these are the only forms in which the standard assessment could be raised according to the usual practice, the fair inference to be drawn is, that the zemindars were not allowed by the Legislature the power of enhancing the standard pergunnah assessment prevailing at the time of the Permanent Settlement.

If, however, this principle were strictly adhered to, the zemindars of Bengal would stand in a more unfavourable position than those of Madras, for in the latter Presidency, except in one or two districts in which alone a survey and fixed money assessment preceded the Permanent Settlement, the prevailing rate in all the other zemindaries was a share of the crop which increases the income of the zemindary with every increase of produce and price. Whereas in Bengal the standard assessment being generally fixed in money at so much per beegah, though varying with the quality of the soil and the produce grown, the zemindars could derive no benefit from increase of price. Looking, however, to the vagueness and uncertainty of the terms of the Permanent Settlement, I do not consider that the Government, while legislating for the protection of the ryots according to the reservation originally made, are precluded from extending to the zemindar the benefit of a fair and equitable assessment, which, according to the usage of the country, would take into consideration the increase of prices; not such an assessment, be it remembered, as a private proprietor consulting his own interests only could reasonably demand as a fair and equitable rent, but an assessment based on such fair and equitable terms as are secured to the ryots of the country in general under the administration of our Government.

Minute, No. I, dated December 1864, by the Honourable G. N. Taylor, on the relative rights of Zemindars and Ryots in Bengal.

Leg. Pros., August 1865, Nos. 18–27.

No. 24a.

The manner in which such a measure might be best carried out would be, *first*, to determine the pergunnah rates prevailing at the date of the Permanent Settlement as nearly as they can be ascertained and fixed, and then to increase those rates by such a percentage as is fairly proportionate to the increase of present average prices over those prevailing at the time of the Permanent Settlement, making liberal allowance for future fluctuations. Simplification of the demand upon the ryots was one of the objects expressly contemplated by the author of the zemindari system, who observes that "in order to simplify the demand of the landholder upon the ryots or the cultivators of the soil, we must begin with fixing the demand of Government upon the former." In now giving to the zemindar the benefit of the increase of prices, which was never before clearly allowed to him, the Government is perfectly at liberty so to commute the new demand into a fixed and permanent money payment as would give the greatest stimulus to the industry of the ryots upon which the prosperity of the country depends.

Equalisation and correction of the pergunnah rates, where they are not reasonable, is already provided for by the regulations, and will be within the scope of the Commission.

After the standard assessment has been once for all fixed upon the lands as above provided for, and carefully registered, the further provisions required for regulating the relative rights of the zemindar and the ryot will be but few:—

(1.) As regards waste lands, there being no mirasi rights, the zemindar will be at liberty to let them out to new tenants upon any terms he may choose to demand, irrespective of the standard assessment. But such terms must be expressly provided for in the contract or pottah, or the lands will be considered to be held under the ordinary settlement.

(2.) As regards cultivated lands, if any of these are held upon a higher assessment than the standard now fixed, such assessment will not be disturbed, as it represents the terms upon which the right of occupancy was acquired or is now held.

(3.) On the other hand, ryots holding lands from the date of the Permanent Settlement at a fixed rent lower than the new standard, will also be maintained in their tenure under sections 3 and 4 of Act X of 1859.

(4.) In all cases the zemindars and the ryots can enter into engagements upon any other terms of settlement than the standard by mutual consent.

(5.) But whenever the terms of a lease expire, and the ryots demur to those which are newly offered by the zemindar, they can demand an adherence to the standard assessment.

(6.) The vague authority given to the zemindar by section 17, Act X of 1859, to enhance the rent if the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryots, will cease, and hereafter a zemindar will not be authorised to demand any increase of rent from occupancy ryots, except when the productive powers of the land are increased at his own expense, by new irrigation or otherwise, on which occasions the terms of increase to be paid by the ryot will of course be specially contracted for.

Such are the modifications of the existing law which I believe to be sufficient to meet the present difficulties. I assume that further enquiries conducted by local officers into the usages and practice of various districts and villages, and as to the means and data available for purposes of assessment, will be necessary before legislation can be finally carried out. In the above remarks, I have endeavoured to indicate the direction in which such enquiry should proceed, in order that legislative action may safely be taken upon the particular points in the present law which injuriously affect the interests of both zemindar and ryot.

CALCUTTA, *December 1864.* } G. N. TAYLOR.

APPENDIX.

Appendix to Minute No. I. Extracts from Mr. Shore's Minute of June 1789, respecting the Permanent Settlement of Lands in Bengal.

No. 24a.

Extracts from MR. SHORE'S *Minute of June 1789, respecting the Permanent Settlement of Lands in Bengal.*

216. The rent of the land, through whatever channels it passes into the public treasury, is paid originally by the ryots, or the immediate cultivators of the soil. Their situation, not only on this account, but as being the most

helpless and exposed to oppressions, ought naturally to attract the attention and engage the interest of the ruling power.

217. By the Institutes of Akbar, we are informed, that when from motives of justice and humanity, the emperor ordered a settlement of the country to be made for ten years, he began by directing a measurement of the lands, and by fixing the rates of them, according to their qualities and produce. The proportion which he claimed for the State was one-third of the medium produce.

218. Whether this operation extended to Bengal, I know not; Turymull is supposed to have fixed the rent payable by the ryots, but by what rules he settled it, we are not certainly informed. The assul jumma established by him does not now anywhere exist.

219. At present no uniformity whatever is observed in the demands upon the ryots. The rates not only vary in the different collectorships, but in the pergunnahs composing them, in the villages and in the lands of the same village, and the total exacted far exceeds the rates of Turymull.

220. Where these variations take place, by any established rules founded on the quality of the soil, its produce, and the uses to which the land is applied, however perplexing they may be to the Collector, or other officers of Government, I do not deem them of material inconvenience to the ryots, who from usage understand them, and can tell when they are exposed to exactions. But the standard is often so indeterminate, that the ryots neither know what they have to pay, nor can the officers of Government, without the most difficult investigation, ascertain whether they have been imposed upon or not.

221. Of all subjects relating to the revenues, this, though the most important, is at the same time the most difficult to explain. I distrust my own knowledge upon it, and still more my ability to render it intelligible. I shall not, therefore, in this place, enter into all the detail that it admits, but confine myself to a few general principles of practice only.

222. There are two fundamental distinctions in the tenures of the ryots, into which almost all the variations might be resolved; the first, when the rents are calculated upon an assul, or original rate, with an addition of the cesses subsequently imposed.

223. The imposition of these cesses is generally discretional; they differ in names, numbers and amount throughout the country; their rates are variously regulated, at so much per rupee, or according to the number of months, and by other distinctions. The proportion of each is not calculated upon the assul only; but generally upon the aggregate of that and the preceding cesses, and so on progressively.

224. The second is, where a fixed sum is paid for a specific quantity of land, at so much per beegah, without any other distinction. The rate, in the first instance, may be settled with a due regard to the quantity of the land and its produce. The ryots, holding under this form, are compelled to stand to all losses; to pay for the land, whether cultivated or not; and no security against demand but desertion.

225. There are two other distinctions of importance also with respect to the right of the ryots. Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause, have a stronger right than others, and may, in some measure; be considered as hereditary tenants, and they generally pay the highest rents. The other class cultivate lands belonging to a village where they do not reside; they are considered as tenants-at-will; and having only a temporary accidental interest in the soil which they cultivate, will not submit to the payment of so large a rent as the preceding class, and when oppressed, easily abandon the land to which they have no attachment.

226. In general, throughout Bengal, the rents are paid by the ryots in money; but in some places the produce is divided in different proportions between the cultivator and zemindar. This custom chiefly respects lands under the denomination of khamar.

227. A ryot pays his rent either by a formal or implied agreement.

228. The first is a deed, called a pottah, which ought to express the nature and terms of his tenure, and the amount of his rent; it often, however, refers some of the conditions to indefinite rules, such as the custom of the village, or the pergunnah, the rates of an elapsed year, or the rent of his predecessor.

Appendix to Minute No. I. Extracts from Mr. Shore's Minute of June 1789, on the Permanent Settlement of Lands in Bengal.

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229. The terms of an implied agreement are sometimes specific, as in Chittagong, where the rents are paid from year to year, according to rates established upon a measurement of the lands in the year 1767; or indefinite, as having a reference to the rates of the last and preceding year, as in Nuddea.

230. In some places, as in the northern parts of the Dacca District, the collections are made by a hustabood, or measurement of the land held by each renter, immediately previous to the harvest, agreeable to which the lands are valued, and rents received.

231. It would be endless to attempt the subordinate variations in the tenures or condition of the ryots. It is evident that, in a country where discretion has so long been the measure of exaction, where the qualities of the soil and the nature of the produce suggest the rates of the rents, where the standard of measuring the land varies, and where endless and often contradictory customs subsist in the same district and village, the task must be nearly impossible. The Collector of Rajshahye observes upon this subject, "that the infinite varieties of soil, and the further variations of value, from local circumstances, are absolutely beyond the investigation or almost comprehension not merely of a collector, but of any man who has not made it the business of his life."

232. The distinctions above pointed out have a reference to some rule; but the abuses that subsist are great and more important to be known: amongst these the following may be enumerated:—

233. *First.*—The arbitrary impositions of the zemindars, farmers, and others, to which the ryots are subject, which are generally measured by their supposed ability to pay them. The pretences for these impositions are various; the death of a zemindar, the birth of a son, any increase by Government upon the zemindar, are some amongst the number. A stipulation is sometimes exacted, and without ceremony given, that these taxes shall terminate with the year; but they are seldom relinquished, without the substitution of others to an equivalent amount.

234. *Second.*—The want of formal engagements between the renters and the ryots. This is a very general complaint, as it renders it almost impossible to detect exactions.

235. *Third.*—The inequality of the assessment, to the advantage of the superior and to the great injury of the inferior ryots, established by the influence or impositions of the former.

236. *Fourth.*—The indefinite terms of the pottahs in some places, which neither specify the quantity nor the quality of the land, or rate of payment.

237. *Fifth.*—The arbitrary custom of levying the deficiency occasioned by failures in some parts of a district upon the other ryots.

238. *Sixth.*—The continual breach of engagements with the ryots, on the part of the zemindars or landlords and renters.

239. *Seventh.*—The want of regular discharges to the ryots, for the rents which they pay.

240. On the other hand, the ryots derive advantages even from abuses. The want of engagements, or of precision in the terms of them, affords them opportunities of imposing upon the landlords; artifice is opposed to exaction, and often with success. They cultivate lands of which there is no account, and hold them in greater quantities than they engage for; hence they are enabled to pay rents and cesses which appear extortionate; they hold lands at reduced rates by collusion; obtain grants of land fit for immediate cultivation, on the reduced terms of waste land; and by management with a renter at the close of a lease, procure fictitious pottahs and accounts to be made out, with a view to defraud his successor.

241. It has been found that the ryots of a district have shown an aversion to receive pottahs which ought to secure them against exaction, and this disinclination has been accounted for in their apprehensions, that the rates of their payments being reduced to a fixed amount, this would become a basis of future imposition; but admitting this to have its weight, the objection may be also traced to other sources in the preceding explanations. The Collector of Rajshahye informs us, "that he fears the ryots would hear of the introduction of new pottahs, with an apprehension that no explanation could remove."

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382. Rights depending upon the discretion of the ruling power must be deemed precarious; despotism could extend its claims to the subversion of the rights of the zemindars, without an avowed and direct infringement of them, but its practice, generally speaking, has been in favour of them. The zemindars of Bengal were opulent and numerous in the reign of Akbar, and they existed when Jaffier Khan was appointed to the administration; under him and his successors, their respective territorial jurisdictions appear to have been greatly augmented; and when the English acquired the Dewanny, the principal zemindars exhibited the appearance of opulence and dignity.

383. A property in the soil must not be understood to convey the same rights in India as in England; the difference is as great as between a free constitution and arbitrary power. Nor are we to expect under a despotic Government fixed principles, or clear definitions of the rights of the subject; but the general practice of such a Government, when in favour of its subjects, should be admitted as an acknowledgment of their rights.

384. From these data, others may be enabled to place the subject in a clearer light; and to reconcile the principles of right with the practice of an arbitrary Government, I have endeavoured to point out what is actually left to its subjects, under the assertion of claims apparently calculated to leave them nothing: this part of the precedent is most worthy our imitation.

385. In India, the land has always furnished the chief revenues of the State, and the taxes are immediately imposed upon it; commerce has rarely been considered of importance.

386. Talukdars who pay their rents to the officers of Government are, in all material respects, on the footing of zemindars; but they enjoyed a privilege which has of late years been invaded—that of an exemption from an augmentation of their rents—and on the other hand, they have obtained remissions.

387. Those who pay to the zemindars are more dependent; but it is a general rule, I believe, that their rents shall not be liable to augmentation at the will of the zemindar. That they were subject to a proportion of the increase demanded from him must be understood; but since the increase and deductions have been imposed and granted upon an estimate only, without reference to any fixed rule or rate, the variations of practice with respect to talukdars will be found to supersede all rules. A talukdar of either description, who has once been allowed a remission, is subject by prescription to a future increase; where he has paid the same rents invariably from the establishment of his tenure, he is not liable to it; the terms of the conditions by which he holds his taluk, are sometimes special, and furnish the particular rules to be observed between him and the zemindars.

388. With respect to the ryots, their rights appear very uncertain and indefinite. Whilst the demands of Government upon the zemindars were regulated by some standard, as I conclude it was from the time of Turymull to that of Jaffier Khan, they had little temptation or necessity to oppress their ryots; but the same variable discretion which has affected the payments required from them, has extended in the same manner to the ryots. The rates of the lands were probably fixed formerly according to the nature of the soil and its produce; the cesses imposed by the zemindars were an enhancement of these rates, and arbitrary without being at first oppressive.

389. It is, however, generally understood, that the ryots by long occupancy acquire a right of possession in the soil, and are not subject to be removed; but this right does not authorise them to sell or mortgage it, and it is so far distinct from a right of property. This, like all other rights under a despotic or varying form of Government, is precarious. The zemindars, when an increase has been forced upon them, have exercised the right of demanding it from their ryots. If we admit the property of the soil to be solely vested in the zemindars, we must exclude any acknowledgment of such rights in favour of the ryots, except where they may acquire it from the proprietor.

390. Although much has been said with respect to the ryots, I shall nevertheless enter into a more particular detail of what regards them.

391. In every district throughout Bengal, where the licence of exaction has not superseded all rules, the rents of the land are regulated by known rates called *nirik*, and in some districts, each village has its own; these rates are formed, with respect to the produce of the land, at so much per beegah; some soil pro-

duces two crops in a year of different species, some three; the more profitable articles, such as the mulberry plant, betel-leaf, tobacco, sugarcane and others, render the value of the land proportionably great.

392. These rates must have been fixed upon a measurement of the land, and the settlement of Turymull may have furnished the basis of them. In the course of time, cesses were superadded to that standard, and became included on a subsequent valuation, the rates varying with every succeeding measurement. At present, there are many abwabs or cesses collected distinct from the *nirik*, and not included in it, although they are levied in certain proportions to it.

393. The following abstract of a ryot's account taken near eight years before this time, will show the mode in which this is done:—

				R.	A.	G.	C.
Rent of 7 beegahs 12 cottahs 7 chattacks of land, of various produce, calculated at a certain rate per beegah according to its produce, extracted from an account of demands and payments called Hissawb							
Khorcha				14	0	8	0
ABWAB CESSES.							
Chout at 3/16 p. R.	...	2	10	0			
Poolbundy, a half M° demand or ½-4 of the jumma	...	9	7	2			
Nuzeerana one M° or ½	...	1	2	15			
Mangun do. do.	...	1	2	15			
Fouzdarry 3/4 of one M° amount or 1/16 ...	...	14	15	0			
Company's nuzzerah one month & a quarter	...	0	1	7			
Batta, one anna p. R.	...	0	0	14	8	12	2
Total ...					22	12	10	2
Khelat at 1 anna & half p. each rupee of the above sum ...					2	2	1	2
Total jumma ...					24	14	12	0

394. The first sum of Rs. 14-0-8 is called the original rate of the land, but even this may include cesses consolidated into it; some of the abwab or cesses, since added, are subsequent to the period of the Dewanny.

395. If the accounts of the same land were now examined some additional impositions might appear. The zemindars introduce them by degrees, at intervals of two, three, four, or five years, and rarely attempt them for two or three years successively. Solicitation and influence are equally employed to effect the establishment of them; and a ryot, where the burthen is not too heavy, will rather submit than resist or complain. Temporary extortion may be practised at any time; but a permanent exaction of this nature can rarely be established by force alone upon the ryots.

396. *Teecka* pottahs generally express a fixed rate for the land at so much per beegah, without any other article; but the sum total includes the several existing cesses at the period of adjustment, and others are sometimes again added and consolidated.

397. When the rents by successive impositions become too heavy, the ryots either abscond, or the zemindar allows them a compensation by giving them other land at a favourable rate; but seldom by remitting either the imposts or diminishing the rates of the other lands. In some places, however, the accumulation of abwab has caused a proportionate diminution in the assul; this is particularly the case in Dinagepur.

398. When a measurement of the lands takes place, the existing rates are confirmed, and generally with some additions. Where none can be found, a reference is made to the rates of other lands of the same quality in the vicinity of the spot measured; but the adjustment of them, in that case, is a business of considerable difficulty. Every part of the transaction is a subject of contention; the demands on both sides are unreasonable, and are finally determined by a compromise.

399. It is the business of the putwaree to register these rates, which were also formerly recorded by the mofussil canongoes; and these, when wanted, became open to the inspection of the Government.

400. It would be impossible, I conceive, to fix specific rates for any one species of produce, in any district generally; the quality of the soil and the situation of the land, as enjoying the advantages of markets and water-carriage, must determine it. The remark applies to every species of produce.

401. Where the rates of land are specific and known, a ryot has a considerable security against exaction, provided the officer of Government attends to his complaints, and affords him redress; and without this he can have none. The additional sanction which he derives from a pottah, supposing it to be properly drawn out, is this: that it specifies, without reference to any other account, the terms upon which he holds the land, and the amount of the abwab or cesses, which are not mentioned in the nirkbundy, nor always in the jummabundy.

402. In those places where the accounts are kept with the most regularity, and the established rates adhered to, the annual adjustment of the rent to be paid by each ryot, is not made without difficulty. The usual mode is to form a survey of the ground, and compare it with the accounts of the former year, in which every species of cultivaton is specified, together with the relative situation of the land. Where the general appearance of the land corresponds with the detail of it in the accounts, the rent is adjusted without much difficulty; but where it differs, either by exhibiting a greater quantity of land in cultivation, or any article of a superior quality on the same land, the rents of such land are demanded, and a measurement is often adopted to determine them. The nature of the business shows that it can only be effected by a person well versed in it.

403. In the ordinations of the emperors, the officers employed in the collections are constantly encouraged and required to preserve the more valuable species of produce.

404. I suppose that the rents in Bengal may be collected according to ascertained rates throughout two-thirds of the country; and, notwithstanding the various abuses which I have detailed, it is evident that some standard must exist; for, without it, the revenues could never be collected from year to year as they have been. Exactions on one side are opposed by collusions on the other; but we may with certainty conclude, that the ryots are as heavily assessed as ever they were.

405. The land is divided into ryotty and khamar; the rents of the former are paid in money, and of the latter, in kind. The usual division is half to the zemindar and half to the cultivator; but some part of the expenses generally fall upon the latter, in addition to the stipulated proportion.

406. Pottahs to the *khoodkhasht* ryots, or those who cultivate the land of the village where they reside, are generally given, without any limitation of period; and express that they are to hold the lands, paying the rents from year to year. Hence the right of occupancy originates; and it is equally understood as a prescriptive law, that the ryots who hold by this tenure, cannot relinquish any part of the lands in their possession, or change the species of cultivation, without a forfeiture of the right of occupancy, which is rarely insisted upon; and the zemindars demand and exact the difference. I understand also, that this right of occupancy is admitted to extend, even to the heirs of those who enjoy it.

407. *Pyekhast* ryots, or those who cultivate the land of villages where they do not reside, hold their lands upon a more indefinite tenure. The pottahs to them are generally granted with a limitation in point of time: where they deem the terms unfavourable, they repair to some other spot.

408. Such are the general usages and practice, as far as I have been able to ascertain; but there are local customs which can only be known by an examination on the spot. In some parts of the country, I understand that the zemindar is, by prescription, precluded from measuring the lands of the ryots, whilst they pay the rents according to the pottah and jummabundy. Amongst the inconveniences and abuses which may be inferred from this detail, the principal appear to be these:

The gradual introduction of new impositions.

The number of them, and intricacy attending the adjustment of the ryots' accounts.

409. I shall now proceed to state and consider the several propositions which have been made, at various times, for the introduction of regularity, and the correction of the existing abuses.

410. Mr. Francis proposed that it should be made an indispensible "condition with the zemindar, that, in the course of a stated time, he shall grant new pottahs to his tenants, either on the same footing with his own quit-rents;—

Appendix to Minute No. L. Extracts from Mr. Shore's Minute of June 1789, on the Permanent Settlement of Lands in Bengal.

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that is, as long as the zemindar's quit-rent remains the same,—or for a term of years, as they may agree." The former is the custom of the country. This will become a new assal jumma for each ryot, and ought to be as sacred as the zemindar's quit-rent. The pottah should be expressed in the simplest terms possible without a single abwab or muthote; so much per beegah of land which he cultivates, varying only according to the articles of produce, or quality of the soil.

411. By some, it has been proposed that the collectors should grant pottahs to the ryots; and we have, I believe, on some occasions, authorised this measure; but, of late, the applications on this subject have been postponed for general consideration.

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432. This detail, without extending it unnecessarily, points out the objections to the immediate establishment of general rules, and the necessity of adapting them to the local circumstances of each district. In deviating from established usages, we run a risk of substituting others of more detriment in their room. No order of Government should ever be issued unless it can be enforced; to compel the ryots to take out pottahs where they are already satisfied with the forms of their tenure and the usages by which rents are received, would occasion useless confusion, and to compel the zemindars to grant them under such circumstances, or where the rules of assessment are not previously ascertained, would, in my opinion, be nugatory. When Mr. Francis proposed that the zemindars should be compelled to grant pottahs to the ryots within a limited time, he was not aware, perhaps, of the little intercourse subsisting between the more considerable zemindars and the ryots, nor that pottahs are generally granted by the farmers, gomastahs, and munduls of the villages. To require that the pottahs should be given for a definite time, as proposed by some of the Collectors, would diminish the force of that prescription which established a right of occupancy in favour of the ryots. In some places, as for instance in Jessore, the issuing of pottahs at present would tend to the confirmation of the existing abuses, by which it appears, that the zemindar is more defrauded than the ryots oppressed, notwithstanding the numerous taxes imposed upon them.

433. In authorising the Collectors to grant pottahs to the ryots, we certainly deviate in some degree from an established principle, which I always assume, that the zemindars are the proprietors of the soil. I have admitted, it is true, on the grounds of precedent, the right of the Government to interfere in regulating the assessment upon the ryots; but I object to the policy and propriety of this interference without evident necessity: where a zemindar has refused or evaded the execution of the orders prescribed to him for the security of his tenants, or is unable to execute them, the interference of the Collector may be expedient.

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435. Mr. Grant's proposition is to be considered in two lights: first, as furnishing the standard for the demands of Government upon the country; and secondly, as establishing the rules for collecting the rents from the ryots.

436. With respect to the first, I think we have, in the accounts supplied by the Collectors, and their experience, a better standard for regulating the demands of Government.

437. With regard to the second, it has been already observed, that the mode by which the demand of Government upon the zemindar was regulated, and that by which the rents of the ryots were collected, are different. Admitting that, in some instances, the ryots paid the taxes imposed by the nazims upon the zemindars in the same proportions to the assul, and under the same denominations as the zemindars, this was by no means invariably the case; on the contrary, I hold the reverse generally to be true.

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457. The leading principles upon which I shall ground my propositions for the ensuing settlement, are two.

458. The security of Government with respect to its revenues; and the security and protection of its subjects.

459. The former will be best established by concluding a permanent settlement with the zemindars or proprietors of the soil; the land, their property, is the security to Government.

460. The second must be ensured by carrying into practice, as far as possible, an acknowledged maxim of taxation. That the tax which each individual is bound to pay, ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor and every other person.

461. It is essential to the success of these principles, that the settlement be made upon such fair and moderate terms, that the zemindars may derive advantage from their engagements, after a due performance of the stipulations contained in them.

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525. With respect to ryots, however, their security requires that the settlement made with them, should become matter of record. In every zemindary, where the established laws of collections have not been infringed, this is the case at present.

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528. We know also, that the zemindars continually impose new cesses upon their ryots, and having subverted the fundamental rules of collection, measure their exactions by the abilities of the ryots. This is a very serious evil; for, exclusive of the injury which the unprotected subjects of Government sustain from it, a necessity follows of our interference to regulate the assessment upon them; a task to which we are rarely equal. That it has been accomplished is admitted, but generally I believe, either at the expense of Government or its subjects; that is, the jumma is lowered beyond what it ought to be, or kept up at too high a rate. The former is most often the case.

529. I shall not urge these arguments beyond what is fair. In opposition to them, it has already been observed, that the demands of Government have been fluctuating; that the zemindars have had no certain security of enjoying the advantages arising from a due administration of their estates and hence have wanted the encouragement which the present system is meant to give, and have perhaps been forced into practices which, under a permanent system, would have been forborne.

530. But the ignorance and incapacity of the zemindars are not to be forgotten. The consequences are equally prejudical to Government and its subjects, whether derived from this source or any other.

531. The security now to be given to the zemindars is more substantial than ever it was; and if the system proposed had been adopted when we acquired the Dewanny, and successively adhered to both the Government and its subjects would have experienced the benefit of it; some time will now be required to convince the zemindars that we are serious, and a longer period elapse, before they can or will obtain a knowledge of their interests, and of the mode of conducting them. To eradicate those habits and impressions which have been continued through life, is scarcely to be expected during the present generation; sufferance will at first teach them; and the stability of our measures must promote self-interest. Government begins by giving them an example of good faith. In relying, therefore, upon the operation of the principle which we assume, we ought not, during the progress of it, to abandon the ryots to caprice or injustice, the result of ignorance and inability. With knowledge, or the means of obtaining it, we may correct the consequences of both; and, at present, we must give every possible security to the ryots, as well as to the zemindars. This is so essential a point, that it ought not to be conceded to any plan.

Appendix to Minute No. I. Extracts from Mr. Shore's Minute of June 1789, on the Permanent Settlement of Lands in Bengal.

Leg. Pros., August 1865, Nos. 18—27.

No. 24a.

Extract from Mr. Shore's *Minute of December 1789, respecting the Permanent Settlement of Lands in Bengal.*

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10. It is allowed that the zemindars are, generally speaking, grossly ignorant of their true interests, and of all that relates to their estates;—that the detail of business with their tenants is irregular and confused, exhibiting an intricate scene of collusion, opposed to exaction, and of unlicensed demand substituted for methodised claims;—that the rules by which the rents are demanded from the ryots, are numerous, arbitrary, and indefinite;—that the

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officers of Government, possessing local control, are imperfectly acquainted with them, whilst their superiors, further removed from the detail, have still less information;—that the rights of the talukdars dependent on the zemindars, as well as of the ryots, are imperfectly understood and defined;—that, in common cases, we often want sufficient data and experience to enable us to decide with justice and policy upon claims to exemption from taxes; and that a decision, erroneously made, may be followed by one or other of these consequences: a diminution of the revenues of Government, or a confirmation of oppressive exaction.

11. To the truth of this detail, there will be no dissenting voice; and it follows from it, that until the variable rules adopted, in adjusting the rent of the ryots, are simplified and rendered more definite, no solid improvement can be expected from their labours, upon which the prosperity of the country depends. The difficulties attending this task are allowed by all who have had experience of it; nor is much required to know, that to make an adjustment between two parties, where one fears, and each suspects the other,—in a country too, where every innovation is received with disgust and apprehension,—local information, assiduity, and perseverance are indispensable requisites.

12. No one, I believe, is so sanguine as to expect that the perpetuation of the zemindary assessment will at once provide a remedy for these evils. Time must be allowed for the growth of confidence, and for the acquisition of knowledge. We know from experience what the zemindars are; and I am not inclined, in opposition to that experience, to suppose that they will at once assume new principles of action, and become economical landlords and prudent trustees of the public interests.

13. The necessity of some interposition between the zemindars and their tenants is absolute; and Government interferes by establishing regulations for the conduct of the zemindars, which they are to execute, and by delegating authority to the collectors to enforce their execution. If the assessment of the zemindaries were unalterably fixed, and the proprietors were left to make their own arrangements with the ryots, without any restrictions, injunctions, or limitations, which, indeed, is a result of the fundamental principle, the present confusion would never be adjusted.

14. This interference, though so much modified, is in fact an invasion of proprietary right, and an assumption of the character of landlord, which belongs to the zemindar; for it is equally a contradiction in terms to say that the property in the soil is vested in the zemindar, and that we have a right to regulate the terms by which he is to let his lands to the ryots, as it is to connect that avowal with discretionary and arbitrary claims. If the land is the zemindar's, it will only be partially his property, whilst we prescribe the quantum which he is to collect, or the mode by which the adjustment of it is to take place between the parties concerned.

15. The most cursory observation shows the situation of things in this country to be singularly confused. The relation of a zemindar to Government, and of a ryot to a zemindar, is neither that of a proprietor nor a vassal, but a compound of both. The former performs acts of authority, unconnected with proprietary right;—the latter has rights without real property; and the property of the one, and rights of the other, are, in a great measure, held at discretion. Such was the system which we found, and which we have been under the necessity of adopting. Much time will, I fear, elapse before we can establish a system, perfectly consistent in all its parts, and before we can reduce the compound relation of a zemindar to Government, and of a ryot to a zemindar, to the simple principles of landlord and tenant. But substance is more important than forms. If the propositions of the collectors for correcting the prevailing abuses, be examined, they will be found defective; and the relations which our experience has enabled us to establish, will, when considered, appear indefinite, where they ought to have the utmost precision. Orders, which should be positive, are tempered by cautious conditions; nor am I ashamed to distrust my own knowledge, since I have frequent proofs that new enquiries lead to new information.

16. Notwithstanding repeated prohibitions against the introduction of new taxes, we still find that many have been established of late years. The idea of the imposition of taxes by a landlord upon his tenant implies an inconsistency;

and the prohibition in spirit, is an encroachment upon proprietary right; for it is saying to the landlord, you shall not raise the rents of your estate. But without expatiating on this part of the argument, I shall only here observe, that with an exception of an arbitrary limitation in favour of the khoodkhast ryots, the regulations for the new settlement virtually confirm all these taxes, without our possessing any records of them, and without knowing how far they are burthensome or otherwise. In some cases a knowledge of those impositions has been followed by the abolition of them; in others it may be equally necessary: wherever it takes place, there is a risk that the assessment will suffer a proportionate diminution. At present they are in many places so numerous and complicated, that after having obtained an enumeration of the whole, the amount of the assul with the proportionate rates of the several abwabs, it requires an accountant of some ability to calculate what a ryot is to pay, and the calculation may be presumed beyond the ability of most tenants. The pottah rarely expresses the sum total of the rents; and it is difficult to determine what is extortion.

No. II.

Relative rights of Zemindars and Ryots by G. N. Taylor, Esq., *dated the 1st February 1865.*

In my former paper I attempted a brief analysis of the views and opinions of the authors of the Permanent Settlement and of the early regulations as bearing upon the Bengal rent question, and I endeavoured to show how the matter now stands, and what are the specific remedies required. Having since read several valuable minutes by the Judges of the High Court and other papers which I had not before seen, I now propose to enter somewhat more closely into the subject and to consider some of the measures which have been brought forward to remedy the existing state of things.

As I before stated, the two main questions to be solved are, *first*, what classes of ryots are entitled to occupy land hereditarily at pergunnah or customary rates; and *secondly*, how those rates are to be determined. I have already shown that, with the exception of the special tenures of a more perfect character, such as talukdari, istimrardari, &c., which are specially provided for, the general condition of cultivators contemplated throughout the Permanent Settlement Regulations, *e.g.*, the preamble of Regulation II of 1793, sections 54, 55, 56, 57, and 60 of Regulation VIII of 1793, section 5 of Regulation XLIV of 1793, and sections 6 and 7 of IV of 1794, is that of hereditary holders of land at customary rates determined quite independently of the zemindar, but without a transferable interest in the soil. Such a tenure as that of the mere tenant-at-will is nowhere even alluded to. Section 60 of Regulation VIII of 1793 provides, indeed, that the pottahs of khoodkhast ryots should not be cancelled except on proof of the rents therein stipulated for being below the nirkbandi of the pergunnah, and from this it might be argued that the inherent right to hold at the pergunnah rate is confined to the tenures of these resident ryots. But, in point of fact, this tenure is the general and universal tenure of the cultivating peasantry in every part of India.

The general question, whether the sovereign, authority, and, in its place, the zemindars, or the cultivating ryots, are the proprietors of the soil, need not be discussed at any length. Admitting that the former are the proprietors, as they are declared to be by the letter of the Permanent Settlement Regulations, their right is of a qualified character. As observed by Mr. Shore in the passage quoted in my previous paper, the zemindars are something *more* than proprietors in exercising sovereign acts of authority, and something *less* in their right being limited and qualified by the separate interests possessed by the cultivators in the land. The real question then at issue is, what *are* these interests according to the general usage of the country?

When fairly examined they will be found to be of the clearest and simplest character. Speaking generally, the allodial interests of the cultivating or village communities of India are of two kinds: the first is a transferable interest, constituting a perfect right of property, and is derived from the grant of the sovereign power, whether of a special individual character or consisting of a more general concession in favour of the whole body of cultivators. Of this description are the mirasi tenures in parts of Southern and Western India, where the village communities have claimed from time immemorial the posses-

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sion of a transferable right of property in the soil. In most other parts of the empire this transferable interest is limited to the holders of lands at more or less favourable rents, who are known as talukdars, istimrardars, and by other names. The different rates and circumstances connected with these favourable grants have constituted a variety of complicated tenures, but they are all defined and limited both in number and extent.

Now the general condition of the cultivators throughout the greater portion of the Madras and Bombay Presidencies—and I believe I am correct in saying, in Bengal and in Upper India generally—has been, time out of mind, that of hereditary possessors of land at customary fixed rates, but without a transferable interest in the soil. These peasant proprietors are known as khoodkhast in Bengal, mouroosi in the North-West and as khadims, as well as by other names in Madras and elsewhere. This was the original state of property in land; though, under British rule, wherever the ryots hold direct of the Government, this interest has, under our permissive acquiescence, been developed into a transferable right of property. The original right of the village communities was derived from the mere act of settlement, and is confirmed by the usage of the country. It is primarily confined to the lands actually under cultivation: and, as resident villagers, the community have also a preferential claim to break up the waste lands within the limits of their village. But this interest being altogether of a permissive character, differing in this respect from the mirasi right described above, is by no means so strong as regards the waste, upon which no labour has been bestowed, as to preclude the sovereign power from appropriating it, or giving it away to others. If the paramount power, or its representative the zemindar, does not so interfere, and the hereditary ryots have been permitted without restriction to bring the waste into cultivation, their right in this waste is identically of the same character as their right in the lands previously cultivated, without any reference to time; nor do the Permanent Settlement Regulations contain any provisions to the effect that the lands which might hereafter be tilled by these hereditary ryots subsequent to the date of the Permanent Settlement, or within any fixed period, shall be held on a different interest from those previously in their possession. The date of the Permanent Settlement marks, in fact, no period in the *rights* of the cultivators, which remained absolutely the same and altogether unaffected by the settlement made by Government with the zemindars.

No matter whether the waste were originally broken up by the hereditary ryot, or first cultivated by others, then relinquished, and afterwards taken up by him, in either case expense is incurred, and when once the hereditary ryot is permitted to cultivate, he does so on the ordinary terms only. Again, the Government, or, in its place, the zemindar, in order to secure a revenue from the waste, may give it out to individuals not belonging to the village; but whenever strangers are so introduced without any express provision to the contrary, they, by general or local usage, are likewise considered to hold on the ordinary terms only. The hereditary but untransferable possession of land is by no means a superior description of right requiring special grants; it is the common form of prescriptive tenure created by the mere settlement of a cultivator, which can only be regulated and limited by special stipulations imposed by the ruling power. Tenants-at-will are altogether an exceptional class. They are mostly the tenants of the cultivators themselves; but when introduced by the Government or the zemindar, this is usually done, not with the view of depriving the hereditary village cultivators of their eventual right to occupy the waste, but as a temporary expedient to secure an immediate revenue from it. Even in these cases, as remarked by Mr. Shore in paragraphs 406 and 407 of his Minute of June 1799, the pottahs must be granted with an express limitation in point of time; when there is no such limitation, the understanding is, that the cultivators are to hold the lands for ever, paying the usual rents from year to year.

Such are the ordinary law and usage respecting land in India as recognised from time immemorial; and however the value of the different interests may have been altered by prices and other circumstances, their nature remains the same. Nothing, I repeat, in the Permanent Settlement entered into between the Government and the zemindar can alter or affect the interests of the cultivators. An absolute right in the soil of their nij-jote or private lands, a right to the full revenue from all other lands not specially exempted, and the power to use

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the waste lands as they please, provided that only the customary rent shall be demanded except by express stipulation in the pottah—these, and these only, constitute the proprietary interests of the zemindars under the Permanent Settlement. Whatever may be the theories held on the subject, this, I contend, is the law of the land, as commonly understood, and I believe almost universally in practice; and if our legislation is now to upset or revoke the law, the amount of confusion and of injury to private rights that will result from such a course cannot be easily conceived. The state of the law as regards *the tenure* of the ryots is, I conceive, the same on this side of India as in Madras, and it may be said with confidence that no change could be made in it without subverting interests that have grown up silently for years.

Such, according to my view, being the state of the law and usage in this matter, I entertain serious objections to many of the amendments and modifications of Act X which have been proposed.

To create, at this period, rights of occupancy founded on 16 years' possession with two or more successions, or on 25 years' possession with one or more successions, and ultimately on 50 years' enjoyment with two or more successions; to require that in cases of 6 years' possession of land by a ryot special notice of ejectment should be given by the zemindar:—and, above all, to vest in the Government the power of determining the proportion of the full *rack-rent* demandable from occupancy ryots and other hereditary holders of land, such *rack-rent* being itself an indeterminate thing fluctuating according to the competition, real or fictitious, which may be secured in each individual case;—these, I submit, would all be arbitrary measures of legislation, which could not be sustained on any principle.

In the Madras Inam Settlement, 50 years' possession was recognised as conferring a valid title to hold land exempt from the public revenue. This rule was based upon pledges previously given under the orders of Government, that long possession would be recognised; and it was simply a concession on the part of Government as regarded the *public revenue*, in respect of which the ordinary laws of limitation do not apply. But it cannot be taken as the proper basis for legislation between two parties like the zemindar and the ryot, both of whom claim rights of private property in the land.

It has been stated that the less stringent terms of 16 and 25 years' possession might be adopted as constituting the right of occupancy "in view of the expectations created by previous administrative and legislative action." But I would ask, if such expectations have been entertained and have been practically sanctioned by our proceedings as being in accordance with usage, would it not be the more proper course to confirm all existing possession which has arisen under prescriptive usage, supported as it is by administrative and legislative measures, and to legislate now for the future only?

Then, as regards the future, I cannot perceive the necessity of creating any special law of prescription in this case founded on 25 or 50 years' enjoyment. This is a question relating to private property, in respect of which the ordinary law of limitation ought to be sufficient. The Legislature has simply to declare what the rights are, and their lapse will be governed by the ordinary provisions of the law. As regards the future occupation of the waste, it might simply be declared—either that all rights in it must be derived from special grants of the zemindars, in which case no length of permissive occupancy could confer any absolute right; or, with reference to existing usage, the onus might be thrown on the zemindar of making any special reservation he may think proper in regard to the occupation of the waste, and in the absence or in default of any such stipulation within the ordinary period of 12 years allowed by the law of limitation, his right to private property in the land would cease, and he would then be restricted to the fixed public revenue derivable from it, in respect of which the ordinary law of limitation does not apply (see section 17, Act XIV of 1859). The latter is the fairer and better course, because it is in conformity with ancient usage, because it would be inconvenient and confusing to introduce in regard to the construction of pottahs to be granted hereafter, new and altogether different conditions from those which have heretofore obtained, and because it will be difficult to make the mass of ryots understand and act upon such provisions contrary to established usage; whereas it is only fair and proper that the onus of making any special reservations should be thrown on the

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zemindars, who can more easily understand the provisions of the law, and who as the parties granting the pottahs, have the best means of observing the conditions.

Then the proposed rule requiring the zemindar to give special notice of ejectment in the case of 6 years' occupancy seems to me highly objectionable. It simply introduces an unnecessary complication; for there is no apparent reason why all non-occupancy ryots, who are simply tenants-at-will, should not be treated alike, whether they have occupied for 4, 6, or 8 years.

But the most important provision which is to be found in a draft Bill prepared by the Allahabad Board, is the power proposed to be conferred upon Government of declaring the proportion of the *rack-rent* demandable from occupancy ryots and others. This novel provision would subvert the vested rights of both parties, and would confer an arbitrary power upon the Government, which might be exercised too much in favour of one party or the other. Such an interference with private rights without any definite rule would destroy all confidence in the action of the Government. Above all, it is based on what appears to me to be a misconception of the real facts of the case. The right to pay a proportion only of the full public revenue is enjoyed by the talukdars of the old Regulations and other holders of special or exceptional tenures. But all khoodkhast or occupancy ryots, of which class I suppose are the general body of the ryots in Bengal, have to pay *the full public revenue* according to the nirkbandi of the pergunnah. This is provided for by section 60, Regulation VIII of 1793, which does not comtemplate the payment by the cultivating ryots of a share only of the full revenue. The public revenue thus paid when prices were low and population scanty was probably more than a rack-rent; so much was this the case that when strangers as tenants-at-will were invited to occupy lands, the terms offered to them were always more favourable than those which could be claimed by the hereditary cultivators, and under no other inducement would they undertake the cultivation. The right of the hereditary occupiers of land consists, then, not in paying a certain proportion only of the rack-rent, but in paying the full public revenue, which, however, was fixed and definite in its terms. The condition of the ryot is favourable or the reverse, according as this assessment is light or otherwise; but in either case when it is fixed in amount, it gives a certainty to property and encourages improvement which a proportion merely of an indeterminate rack-rent could not do.

While I contend that the Government have a right to legislate for the public good, even in matters affecting private rights, such legislation ought, in my opinion, to be carefully directed to remove ambiguities in the existing law or definition of rights, to remove needless restrictions upon real and substantial interests in land, so that they may develope themselves for the public good, and to compound or commute all dormant and mischievous claims. But to create new definitions of tenures and rights, irrespective of the existing state of things, would be a measure of legislation as unsound in theory as it would be dangerous as a precedent.

I am of opinion that sections 5, 6 and 7 of Act X of 1859 have already made the fairest settlement of the case as regards the ryot's tenure, and that it would be unwise to attempt to substitute any doubtful law in its stead. It may perhaps be urged that the 12 years' possession required to constitute a right of occupancy under that enactment is inconsistent with the supposition, or the theory, that ryots acquire this right by the mere act of settlement. But it must be remembered the cultivating ryots or village communities of Bengal, and of other provinces where the higher mirasi right is not known, have merely an hereditary right of occupancy, which carries with it nothing more than a preferential claim to occupy the waste upon the same terms as the other lands, which claim, since the Permanent Settlement, may be overruled or set aside by the zemindar. The provisions of Act X for the first time limited and defined this power of interference, and the zemindar can now exercise his superior right only within the period of 12 years allowed by the ordinary statute of limitation in reference to immoveable property. If he abstains from doing so, the occupancy of the ryot runs into a complete and permanent right, and the zemindar's claim is thenceforward restricted to the ordinary public revenue according to the fixed standard or the pergunnah rate. Strictly speaking, the issue of a pottah without any express stipulation or reservation in his own favour ought

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to bar the zemindar's claim for ever to anything beyond the pergunnah rate; but considering that these pottahs are usually vague in their terms, and that probably in most cases land is occupied without pottah, the 12 years' limit to the zemindar's right of entry seems very fair and proper; moreover, under section 7 of the Act, it is in the power of the zemindar or proprietor either to create a right of occupancy by express terms in the pottah or contract, independently of 12 years' occupancy, or to introduce an express stipulation reserving to himself the actual property in the land for ever. There can be no grades of the hereditary right of occupancy; all cultivating ryots of this class, whether holding from before or after the Permanent Settlement, stand alike on the same footing.

The only part of the present law which, according to my view, imperatively requires improvement, is section 17 of Act X, as bearing upon the rent payable by occupancy ryots. In Madras, as explained elsewhere, an express provision of the Permanent Settlement Regulations, confirmed by subsequent usage ever since, limits the right of the zemindar to the rate of rent levied on the cultivated lands of the same description in the year immediately preceding the Permanent Settlement, whether that rate be a fixed money rent or a share of the crop. I pass by a recent decision given by one of the Zillah Judges of that Presidency impugning the correctness of this interpretation of the law, because I do not believe that that decision can for one moment be upheld contrary to the practice and precedent of so many years. The question has been dealt with by the local Board of Revenue, whose recent admirable analysis and review of the early Regulations, and of the common law and usages of India, as bearing upon the relative rights of zemindars and ryots, I have read with much satisfaction since my previous remarks were penned. The Board have, in my opinion, completely and effectually disposed of the adverse view of those who would reduce the peasant proprietors in the Madras zemindaris to the same uncertain position in regard to rent as that which is now occupied by the ryots of Bengal.

In Bengal the pergunnah rates prescribed by the Permanent Settlement Regulations have proved to be a more indefinite and vague standard than that which was adopted in Madras, and it is difficult to decide whether the actual money assessment then prevailing was intended, or whether the general principle simply was declared, so as to give to the zemindar the benefit of subsequent increase of prices. The question, at any rate, had not been so definitely settled as at Madras by subsequent actual usage, and it was still open for decision until Act X was passed. I consider that that enactment fairly settled the point as regards at least the general principle. By sections 3 and 4 a ryot who has paid a fixed rent from the date of the Permanent Settlement can be charged nothing more. If he has not paid a fixed rate, but has been subject to enhancement from anterior to the Permanent Settlement or has acquired rights of occupancy since that period, or may hereafter acquire them, is, that the rent which he may be called upon to pay shall be governed by the general principles of public assessment recognised by the usage of the country, which give to the sovereign power, and in its place to the zemindar, a share of the benefits resulting from a general improvement in the circumstances of the country. But clause 3 of section 17 of Act X is too vague in its terms to admit of practical application. It allows enhancement of rent whenever the value of the produce or *the productive powers of the lands* have been increased otherwise than by the agency or at the expense of the ryot. The latter clause of this provision seems to me inconsistent with the principle of a money assessment which prevails in Bengal. If the zemindar shared the crop, he would benefit by increased productiveness, whether resulting from the labour or expense of the ryot or no; but as he receives a money rent, which is not fixed, so far as can be ascertained, with reference to the amount and value of any particular kind of produce, how is his fair proportion of the increased productive powers, which may be due to seasons or to various other causes independently of the agency of either party, to be determined? It could, of course, be done by resorting to the sharing system according to the rates prevailing in other provinces; but this would involve a departure from the principle of the Permanent Settlement in Bengal. I would recommend, therefore, as suggested in my former paper, that the claim to enhanced rent from the increased productive powers of the land should be confined to cases in which this increase has resulted from improvement, effected either by irrigation or otherwise by the agency or at the

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expense of the zemindar, and that this increase shall be fixed at such rates as may be fair with reference to the increased value given.

The substitution, in lieu of the third clause in section 17 of Act X, of provisions to the following effect would, I think, do all that is required:—

That the prevailing rate shall be the customary pergunnah rate of the period of the Permanent Settlement, increased in proportion to the present general increase of prices over those prevailing at the date of the Permanent Settlement as nearly as they can be ascertained and determined.

That enhancement of rent shall also be allowed on the ground of increased value given to the land by improvements made at the expense of the zemindar and in a fairly estimated proportion to such increase of value.

That the local Government shall be empowered to frame regulations, appoint officers, and adopt such other measures as may be necessary for the registration of the tenures of the ryots in the Permanent Settlement provinces of Bengal, and for the determination and recording of the rents payable by them in accordance with the provisions of this Act; also to fix the standard articles of produce and register their prices either once for all or at periodical intervals; and that such registration shall be held to be valid in all suits regarding disputed tenures or claims to enhancement of rent.

That section 3 of Act XIV of 1863, which provides that ryots having a right of occupancy may claim an abatement of rent on the ground of its being above the prevailing rate, be cancelled, such higher rent being the terms upon which their right of occupancy was acquired or is now held by them.

That these provisions shall not preclude the zemindars and ryots from entering into any other contract or agreement by mutual consent; but whenever the terms of the ryots' lease shall expire, or become void by law, and no new terms are mutually agreed to, the standard rate of assessment determined and registered, as above provided for, shall be decreed upon the suit of either the zemindar or the ryot.

Such is the purport of the only alterations in the existing law which seem to be urgently required as regards the general question of the rights of zemindars and ryots.

But there are two other points which may be referred to as affecting the condition of landed property under the Permanent Settlement. The first point, which, however, is not applicable to Bengal, is the expediency of commuting into a fixed money rent, by a compulsory Act of the Legislature, the fluctuating shares of produce now taken by zemindars and ryots respectively in those parts of the country where the sharing system still prevails. The second point is the advantage that would accrue by converting into a saleable property the bare hereditary right of occupancy enjoyed by the ryots of Bengal. The earlier Regulations and Act X of 1859, in providing ejectment for non-payment of rent, do not regard the right of occupancy as a saleable property, and this no doubt is strictly correct. But this restriction upon the transfer or sale of the ryot's rights is worth little or nothing to the zemindar so long as the ryot can transmit the occupancy to his heirs and relations without limit; and the removal of this restriction by adding very materially to the value of the lands would indirectly benefit both parties. It seems to me, therefore, to be within the province of the Legislature to provide by law for the compulsory enfranchisement of the restricted tenure of the occupancy ryots by the payment to the zemindar, say, of $2\frac{1}{2}$ times the annual net profit enjoyed by the ryot, which would be about equal to one year's full rent of the land. On payment of this fine once for all, irrespective of the year's rent, the ryots would acquire a transferable property in the land occupied by them. Such a measure, it appears to me, would have a very beneficial effect upon the present imperfect condition of landed property in Bengal.

Letter from H. T. Prinsep, Esq., Registrar of the High Court, No. 2656, dated the 8th August 1865.

No. 24c.

No. 2656, dated Calcutta, the 8th August 1865.

From—H. T. PRINSEP, Esq., *Registrar, High Court of Judicature at Fort William in Bengal,*

To—*The Secretary to the Government of India*, HOME DEPARTMENT.

I AM directed to forward herewith 20 printed copies of the Judgments* of the High Court in the Rent Case.

* Not printed.

A Bill to amend Acts X of 1859, and XIV of 1863.

A Bill to amend Acts X of 1859 and XIV of 1863.

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No. 25.

WHEREAS it is expedient to amend certain provisions contained in Act X of 1859, and Act XIV of 1863; It is hereby enacted as follows:—

Preamble.

1. Sections 6, 7, and 19 of Act X of 1859, are repealed, provided that nothing in this section shall affect the title of any cultivator having at the time of the passing of this Act the right of occupancy as declared in section 6 of the aforesaid Act.

Repeal of certain sections.

2. Every ryot, cultivating or holding land which has descended to him by inheritance, has a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; provided that the possession, either by himself, or by himself and some other person or persons from whom he has inherited, shall have lasted continuously for not less than *twenty* years. Where a cultivator having the right of occupancy shall, with the consent of the proprietor, have exchanged any land in respect to which such right exist for any other land belonging to the same proprietor, such varied occupancy shall be held to be continuous occupancy. Provided also that this section shall not apply to khamar, neej-jote, or seer land let by the proprietor on lease for a term, or year by year, nor (as respects the actual cultivator) to land sub-let for a term, or year by year, by a ryot having a right of occupancy.

Right of occupancy of tenant cultivating or holding inherited land.

3. One succession shall be accepted as evidence of possession for the period mentioned in section 2, unless the contrary be shown.

One succession to be evidence of possession for the period required.

4. Any ryot, who desires to relinquish the land held or cultivated by him, shall be at liberty to do so at the close of the month of Jeth, provided he gives notice of his intention in writing not less than three months before the close of the said month of Jeth, to the person entitled to the rent of the land or his authorised agent. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land. Provided that if notice of enhancement under section 13, Act X, 1859, shall have been served on any ryot, he may within fifteen days of receiving the notice, signify in writing his intention to relinquish his holding, and such intimation shall be held to be a notice under this section, even if it be served within three months of the close of Jeth.

Ryot may relinquish land held or cultivated by him on certain conditions.

Any proprietor who desires to eject a tenant not having the right of occupancy, shall be at liberty to do so at the close of the month of Jeth; provided he gives notice of his intention to such tenant, not less than three months before the close of the said month of Jeth.

Notices under this section shall be issued within the year at the close of which they are intended to have effect. If the person on whom such notice is served, refuse to receive it, and to sign a receipt for the same, the party issuing the notice may make application on plain paper to the Collector, who shall thereupon cause the notice to be served in the manner provided in section 13 of Act X of 1859.

* * * * * *

5. Whenever a tenant, not holding from year to year, or by virtue solely of a terminable lease, may be ousted from his holding, otherwise than for an arrear of rent or for other cause being in contravention of the terms of his lease, the Court shall award him such sum in compensation for any improvements to his holding as shall to the Court appear fair and equitable.

6. Section 17, Act X of 1859, shall be read as follows:—

Amendment of section 17, Act X of 1859.

"No cultivator having an hereditary right of occupancy, shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely:—

"CASE FIRST.—That the rate of rent paid by such cultivator is below the prevailing rate payable by the same class of cultivators for land of a similar description and with similar advantages in the places adjacent.

"*Rule.*—In this case the Court will enhance the rent of such cultivator to the full rate so prevailing.

"CASE SECOND.—That the rent of such cultivator has remained without enhancement from a period since which the money value of agricultural produce in the vicinity has risen, or has been enhanced in a proportion less than the rise of such money value, or otherwise than in consequence of such rise.

"*Explanation.*—This case shall apply only where it may appear to the Court that the rents of similar lands belonging to similar classes of ryots in the neighbourhood, have not adjusted themselves to the increased money value of the produce.

"*Rule.*—Where this case applies, the Court will enhance the rent according to the method of proportion, that is, the increased rent will bear to the previous rent the same proportion as the existing money value of agricultural produce bears to the money value of such produce at some previous period since which the rent has not been enhanced.

"In determining present or former standards of price, the Court shall, if possible, take the average of the prices for periods of not less than five years.

"It shall be competent to the local Government to frame instructions for the ascertainment of the money value of agricultural produce for the purposes of this Rule, and to publish standards of local prices, former and present, for the assistance of the Courts in carrying out this Rule.

"CASE THIRD.—That the rent paid by such cultivator is more than [12½] per cent. lower than the average rent of land of a similar description and with similar advantages in the places adjacent, paid by cultivators not having the right of occupancy.

"*Explanation.*—Where no prevailing rate may be ascertainable under Case I, or where no personal title is proved to hold at a special rate, and the present rent is not shown to be fair and equitable, the rate of rent paid for similar land by cultivators not having a right of occupancy, minus 12½ per cent., shall be held to be a fair and equitable rate under section 5, Act X, 1859, provided such rate is not below the rent actually paid.

"*Rule.*—In this case the Court shall decree an enhancement, such as will raise the rent to the level of the rent assessable at the rates paid by cultivators not having the right of occupancy for land of a similar description and with similar advantages in the places adjacent, minus 12½ per cent.

"*Proviso 1st.*—Provided that the Court may increase or diminish the deduction aforesaid when any special claims on the part either of the landlord or the cultivator, or anything in the customs and usages of the neighbourhood shall, in the opinion of the Court, render such deviation from the rule fair and equitable.

"*Proviso 2nd.*—Provided that the rent of no cultivator entitled to hold at a fixed rent, or rate, or at any rate more favourable than that laid down in the foregoing rule, shall be liable to be enhanced above such rent or rate.

"CASE FOURTH.—That the produce or productive power of the land has been increased.

"*Rule.*—In this case, claims for enhancement may be adjusted in either of the following ways:—

"(*a*) By the Rules under Case I, or under Case III (as the case may be), wherever it may appear that the rent of land in the vicinity of a similar description, and possessing similar advantages, has generally adjusted itself with a due reference to such advantages.

"(*b*) Where no such general adjustment is found to have taken place, or where it may not be possible to declare rates under Cases I and III, the Court shall enhance the rent by the whole value of the increased produce, or of the fairly estimated result of the increased productive power, after deducting such amount, in consideration of the increased responsibilities, expense, or labour of the cultivator, as may appear to the Court equitable.

"CASE FIFTH.—That the quantity of land held by the cultivator has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

"*Rule.*—In this case the Court shall decree rent for the surplus land calculated at the same rates as those paid for the rest of the holding; or, if so

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claimed by the plaintiff, at rates to be fixed by the Rules under Case I, or Case III, foregoing.

"*General Proviso.*—Where the value of the land has been increased by reason of improvements effected wholly or in part by the agency of the cultivator, or at his expense, the Court shall make such abatement in the rate of enhancement otherwise assessable on such cultivator as shall appear to the Court fair and equitable.

"The words 'places adjacent' in this section may be taken to signify such extent of country in the vicinity as, in the judgment of the Court, may reasonably be included in the investigation for the purpose of ascertaining the prevailing standard of rent."

7. After a decision passed under the provisions of this Act, fixing an enhanced rent, or a fair and equitable rent, no suit shall lie for enhancement of the same, until the expiration of ten years from the date of such decision, excepting under Cases IV and V.

8. Nothing contained in the foregoing sections shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot when it contains any express stipulation contrary thereto.

Foregoing sections not to affect written contracts for cultivation of land.

Amendment of clauses 5 and 6 of section 23, Act X of 1859.

9. Clauses 5 and 6, section 23, Act X of 1859, shall be read as follows:—

"5. All suits to eject any ryot or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment, or a lease may be liable to be cancelled, *or on account of the cultivator being a tenant-at-will.*

"6. All suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same, *and to recover damages on account of such illegal ejectment.*"

Amendment of section 28, Act X of 1859.

10. Section 28, Act X of 1859, shall be read as follows:—

"28. So much of section 10, Regulation XIX, 1793; section 10, Regulation XLI, 1795; section 6, Regulation XXXI, 1803; section 21, Regulation VIII, 1805; and section 24, Regulation XII, 1805, as authorises and requires proprietors and farmers of estates and dependent taluks, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said sections, of their own authority to collect the rents of such land, and to dispossess the grantees of the proprietary right in the land, and to re-annex it to the estate or taluk in which it may be situate, is repealed; and any proprietor or farmer who may desire to assess any such land, or to dispossess any such grantee, shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this Act. Every such suit shall be instituted within the period of twelve years, from the time when the title of the person claiming the right to assess the land or dispossess the grantee first accrued. Provided that the title of a proprietor to assess such land shall be held to accrue from the date on which he succeeded to the proprietary right by inheritance, unless the grantee shall produce a written deed of grant, specifically covenanting that the grant shall never be resumed by the grantor or his representatives, or shall be resumed only upon some contingency or condition which has not taken place; provided further that rent-free possession for fifty years, including two successions, shall vest in the grantee or his representative a proprietary right in the land so held. But no length of rent-free occupancy, nor any grant made by the proprietor, shall release such land from its liability to Government for the revenue assessable on the same."

Applications to dispossess grantees of land exempt from revenue.

11. Suits under the last preceding section shall be subject to the same procedure, both in their trial and in appeal, as other regular suits under this Act.

Procedure in suits under preceding section.

Amendment of clause 14, section 1, Act XIV of 1859.

12. Clause 14, section 1, Act XIV of 1859, shall be read without the words, "or of some person under whom he claims."

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13. In modification of section 3, Act XIV of 1863, it is hereby declared that no claim for abatement of rent, on the ground that the rate hitherto paid is higher than that paid by other cultivators, shall be heard, excepting by officers employed in making or revising a settlement of land revenue.

Modification of section 3, Act XIV of 1863.

14. It shall be competent to the Local Government, by a notification to be published in the *Official Gazette* of such Government, to declare the provisions of section 13, Act XIV, 1863 (for the commutation of rents in kind to fixed payments), applicable to any district, or portion of a district, whether under settlement or not, and to declare what officers are empowered to hear and decide cases under that section, and otherwise to lay down rules determining the circumstances under which such suits may be heard or refused, and the principles to be followed in their adjudication.

Power to declare provisions of section 13, Act XIV of 1863, to be applicable to any district or part of a district.

Also, what officers shall hear and decide cases.

15. Wherever rent is taken by division of the produce in kind, or by estimate, or appraisement of the standing crop, or other procedure of a similar nature requiring the presence both of the cultivator and proprietor, either personally or by a representative, if the proprietor shall neglect to attend at the proper period, the cultivator may apply to the Tehseeldar, who may thereupon issue notice to the proprietor to attend within a certain period; and failing his appearance within the period so fixed, the cultivator may proceed to divide, estimate, or appraise the crop in the presence of two witnesses, or (as provided in the following section) he may call in a Government officer to make the division, estimate, or appraisement.

Division and appraisement of produce taken in kind in lieu of rent.

16. Wherever rent is taken in the manner mentioned in the foregoing section, and a dispute regarding the division, estimate, or appraisement, is alleged in a petition of plaint by either of the parties concerned, the Collector, or other officer authorised to try cases under Act X of 1859, may depute an officer of his establishment before whom the division, estimate or appraisement shall be made; and the decision of such officer, subject to the orders of the Collector, or to the issue of a suit filed under Act X, 1859, shall be authoritative and final.

Settlement of dispute regarding division or appraisement of such produce.

17. The clauses of section 1, Act XIV of 1863, shall be read as follows:—

Amendment of clauses of section 1, Act XIV of 1863.

First.—"Suits by lumberdars for arrears of Government revenue payable through them by the co-sharers whom they represent, and for village expenses and other dues for which the co-sharers may be responsible to the lumberdars.

Second.—"Suits by co-sharers for their share of the profits of an estate, or any part thereof, after payment of the Government revenue and village expenses, or for a settlement of account.

Third.—"Suits by maafeedars or assignees of Government revenue for arrears of revenue owing to them as such maafeedars or assignees.

Fourth.—"Suits by talukdars and other superior proprietors for arrears of revenue or otherwise (not being rent claimable under section 23 of the said Act X of 1859) due to them as such talukdars or other superior proprietors.

Fifth—"Suits for damages on account of the illegal exaction of revenue, or of any unauthorised cess or impost, or on account of the refusal of receipts for revenue paid or tendered. Such suits may be brought by co-sharers against their lumberdars, by zemindars or lessees against maafeedars or assignees of Government revenue, and by inferior proprietors against talukdars or other superior proprietors."

18. Suits under class II, section 1, Act XIV of 1863 (suits for profits, or for a settlement of accounts), shall not be exclusively cognisable in the Court of the Collectors of land revenue; but may be heard as ordinary suits in a Civil Court.

Suits under class II, section 1, Act XIV of 1863, may be heard as ordinary suits in Civil Courts.

19. It shall be competent to a Collector or other officer acting under the aforesaid section, to stay further proceedings in any such suit, and to refer the suitors to the Civil Court.

Officers acting under said section, may stay proceedings, and refer suitors to Civil Court.

20. Whenever an original suit of the nature specified in section 19 shall be laid in any Civil Court, and it shall be brought to the notice of the Court that a suit involving any of the points at issue is depending under section 1, Act XIV of 1863, in any Revenue Court, the Civil Court aforesaid shall thereupon issue a precept to the Collector, desiring him to stay further proceedings, and to forward to such Court the record of any proceedings already held in the case.

Civil Court in which an original suit is laid under section 19, may call for record of proceedings in any Revenue Court in which another suit is pending involving points at issue in the case.

21. The rule of limitation contained in section 37, Act X of 1859, is hereby declared to be in force, any other law notwithstanding.

Rule of limitation in section 37, Act X of 1859, declared in force.

22. The provisions of Act VIII, 1859, or other law of Civil Procedure for the time being, shall be applicable to suits under Acts X of 1859 and XIV of 1863, and to suits brought under this Act, in so far as such provisions may not be inconsistent with the provisions of those Acts.

Civil Procedure law in force to apply to suits under Acts X of 1859 and XIV of 1863.

23. In suits instituted in the Courts of Collectors and Deputy Collectors under this Act, or under Acts X of 1859 and XIV of 1863, for the recovery of arrears of revenue or rent of land paying revenue to Government or to an assignee of the Government revenue, or for the recovery of money in the hands of an agent of such land, and in suits instituted by co-sharers for recovery of their share of profits under clause 2, section 1, Act XIV of 1863, the statement of claim shall be written on paper bearing a stamp of one-fourth of the value prescribed for suits instituted in the Civil Courts, and in all other suits instituted in the Courts of Collectors and Deputy Collectors under the said Acts, the statement of claim shall be written on paper bearing a stamp of eight annas, anything in Note (G), article 11, schedule (B), Act X of 1862, notwithstanding.

Stamps for statements of claims in suits instituted in Courts of Collectors or Deputy Collectors, under Acts X of 1859, XIV of 1863, or this Act.

24. Sections 151 to 161 of Act X of 1859 are repealed.

Sections repealed.

25. In the performance of their duties under Acts X of 1859 and XIV of 1863, and under this Act, the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners and the Boards of Revenue; and the Deputy Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate.

Direction and control of Collectors and Deputy Collectors in acting under Acts X of 1859 and XIV of 1863.

26. All orders and judgments passed by a Deputy Collector under Act X of 1859, or Act XIV of 1863 and under this Act, not being orders passed in the course of suits, or in the course of enquiries on applications under section 25, 26, or 27 of Act X of 1859, and relating to the trial thereof, provided the value of the claim, estimated according to any law for the time being in force for the valuation of suits, do not exceed rupees one hundred, shall be appealable to the Collector. The petition of appeal shall be written on a stamp paper of eight annas value, and shall be presented to the Collector within fifteen days from the date of the decree or order, provided that such time as may be requisite for procuring a copy of the decree or order appealed against, shall not be reckoned as part of the fifteen days.

Appeal from orders of Deputy Collectors under said Acts.

27. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons. If on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an agent, the appeal shall be dismissed for default. If the appellant shall appear, and respondent shall not appear in person or by an agent, the appeal shall be heard *ex parte*.

Procedure in appeal.

28. If an appeal be dismissed for default of prosecution, the appellant may within fifteen days from the date of the dismissal, apply to the Collector for the re-admission of the appeal; and if it shall be proved to the satisfaction of the Collector that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal.

Re-admission of appeal.

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29. After hearing the appeal, the Collector shall give judgment in manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final, subject to a special appeal to the High Court.

Judgment in appeal.

30. All such orders or judgments as are above described in section 26, when passed in the first instance by the Collector, shall be final, subject to a special appeal to the High Court; but it shall be competent to the Board of Revenue to call for any case in which the order of a Collector, either original or in appeal, is final, and to pass such orders thereon as they may think proper.

Appeal to High Court final.

31. In suits in which the judgment of the Collector is final, as provided in the last preceding section, the Collector may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of, or could not produce at the time of trial.

Grant of re-hearing upon discovery of new evidence, &c.

32. All orders and judgments passed by a Collector or a Deputy Collector under Act X of 1859, or Act XIV of 1863, and under this Act, not being orders passed in the course of suits or in the course of inquiries on applications under sections 25, 26, or 27 of Act X of 1859, and relating to the trial thereof, provided the claim, estimated according to any law for the time being in force for the valuation of suits, exceed rupees one hundred, and do not exceed rupees five thousand, shall be appealable to the Zillah Judge. If the amount or value in dispute exceed rupees five thousand, the appeal shall lie to the High Court.

Appeal from orders of Collector or Deputy Collector, under Acts X of 1859, XIV of 1863, or this Act.

33. The petition of appeal to the Zillah Judge or High Court shall be written on the stamp paper prescribed for appeals from the subordinate Civil Courts, with reference to the amount or value of the property involved in the appeal; and the Rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the Zillah Judge or High Court under this Act.

Stamp on petition of appeal to Zillah Judge or High Court.

34. The Governor General in Council, after three months' notice to be published in the Official Gazette, may extend the provisions of Acts X of 1859 and XIV of 1863, and of this Act, to any part of the territories under the direct control of the Government of India; and the Governments of Bengal, of the North-Western Provinces, and the Punjab, after similar notice, may extend the same provisions to any part of the territories within their jurisdiction to which they do not already extend. In so doing, the Governor General in Council and such Local Governments shall be competent, by a notice to be published in the Official Gazette, to modify any portion of sections 6 and 17, Act X, 1859, which may conflict with the relative rights of proprietors and cultivators, as already declared by Government, or with the custom of the part of the country to which the afore-mentioned provisions may be extended.

Power to Governor General in Council and Lieutenant-Governors of the North-Western Provinces and the Punjab, to extend Acts X of 1859, XIV of 1863, and this Act.

Draft Statement of Objects and Reasons.

Draft Statement of Objects and Reasons on the Bill to amend Acts X of 1859 and XIV of 1863.

No. 26.

THIS Bill is intended to amend Acts X, 1859, and XIV, 1863, in the following respects:—

First.—As regards the conditions necessary to establish the right of hereditary occupancy.

It is now generally admitted that the simple condition of twelve years' possession, laid down in section VI, Act X, 1859, is inadequate. It bears hardly on the landlord, tends to excite antagonism between the ryot and the landlord, and makes it the landlord's object to oust his tenant before a twelve years' title can accrue.

The original nature of tenant-right in this country has been fully discussed in the late judgments of the High Court at Fort William.* There is a very general consent that, in the Native state of things, the resident ryot, simply as such, is throughout the Continent of India possessed, as a rule, of a right of hereditary occupancy at the customary rates of the vicinity. This may easily be conceived as the normal condition of the cultivator where there is no proprietary right, properly so called; or where the zemindars and village communities possess (as under Native rule) the proprietary right only in their own fields, and of the remainder have merely the right of management. But the question arises whether such a condition is compatible with the system under which we have recognised a proprietary right in the zemindars over the entire area of their estates, or have conferred it upon strangers. It is true that the proprietary right has nowhere been created without the stipulation that all other rights existing by the custom of the country, shall be maintained. Everywhere the subordinate rights in the soil have been strictly guaranteed. But it is conceivable that a right immediately accruing from the simple occupation of land, when that land is claimed by no proprietor, should not accrue, at least so simply and easily, where a proprietary title in the land already vests in another. The change of circumstances would naturally require at any rate a longer and stronger prescription. From the proprietor's point of view, it has been urged that no hereditary title can accrue at all by prescription subsequent to the creation of his property. From the ryot's point of view it is urged that the title of the resident cultivator is one of the subordinate rights which the Government has bound itself to maintain as before inviolate. Every shade of opinion exists between these extreme views. The doubt and difficulty surrounding the question has arisen from the natural endeavour of the British Government to combine the benefits of a full proprietary title with the maintenance of the rights of cultivators as customary throughout the country.

* Thakorance Dassee, appellant, *versus* Bcsheshur Mookerjee, dated 19th June 1865.

In the course of time, this question was answered, but very indefinitely, by enactments recognising the privilege of hereditary occupancy, as created no longer by simple residence, but by residence of *long* duration. Long residence was held to confer the old hereditary right of the country. But no attempt was made till the passing of Act X, 1859, to define by law what precise length of residence was requisite for the purpose.

The first draft of that Act contained a provision which constituted *three* years as the term of prescription for a resident ryot.* The section was criticised on the one hand as too narrow, because confining the privilege to "resident" ryots; on the other as too wide, because not requiring a longer period to establish the prescriptive right. A general consent of opinion was found to prevail both in the North-Western Provinces and Bengal, that twelve years would be a more appropriate term; and that was accordingly adopted in section VI, absolutely and without reference to residence.

* "Resident ryots cultivating land not previously in their occupancy ....shall not acquire a right of occupancy in such land until rent shall have been paid by them for the same .....for a period of three years." *Section V of Bill read a first time on 10th October 1857.*

The conversion of the vague and ill-defined condition of *kudeem* or "long" occupation, into the sharply-drawn prescription of twelve years, is now generally felt, in the light of subsequent experience, to infringe unduly and unnecessarily the rights of the proprietor, and to be open to objection on other grounds. Even by most of those who hold strongly to the necessity of maintaining unimpaired the customary rights of the agricultural community side by side with the system of proprietary settlements, it is admitted that something more is needed in evidence of the right of occupancy than a mere twelve years' possession.

The proposed Bill requires a severer test. To prove an hereditary title, the land must have descended by inheritance to the present occupant, and the tenure must have existed at least twenty years.

It is conceived that these conditions will impose no real hardship on the ryots. All who, accordingly to the custom of the country (as modified in practice by our proprietary settlements) are entitled by any reasonable interpretation of that custom to an hereditary tenure, will fall within the provision, while those liable to ejectment will be cultivators whose recent connection with the land affords no sufficient evidence of anything beyond a purely personal and temporary occupation.

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The concession to the zemindar proposed by the Bill, is substantial and valuable. The ryot to establish his title to occupancy must have *inherited* the land; and, in addition to this, the land must have been in the family's possession for twenty years, with the presumption ordinarily of a much longer possession. The fact of an heir being allowed to succeed without the landlord having interposed to bar the growth of an hereditary title, will (at least for the future, on the stipulations of the law becoming known) sufficiently indicate the landlord's acquiescence in the title.

Section III provides that one succession shall be accepted as *primâ facie* evidence of possession for the prescribed period, subject to rebutment by direct evidence. It is not unreasonable to admit this presumption in favour of the ryot, whose opportunities for the production of exact evidence are in every way so inferior to those of his landlord. If the tenure have really sprung up within twenty years, the landlord will have no difficulty in proving the fact from his village papers.

The following minor amendment has been made (section IV) in reference to a suggestion by Sir B. Peacock. In modification of section XIX, Act X, 1859, the ryot will be obliged to give notice of intention to relinquish his holding, at least three months before the close of Jeth; and an analogous intimation is required to be given by the zemindar to any ryot whom he desires to eject. Where occupancy is allowed for an indefinite period, it is reasonable that either party should have timely intimation of the intended change;—the ryot, that he may have opportunity to look out for other fields; the zemindar, that he may arrange for finding another cultivator.

All such provisions are (section V) subject to any written contract containing stipulations contrary thereto.

Second.—The conditions under which the landlord may claim to enhance the rent of a cultivator with right of occupancy.

(1.) The first condition corresponds with that in section XVII, Act X, 1859:—the rent may be raised to the rate payable by the same class of cultivators for land of a similar description and with similar advantages.

(2.) The second, following the late decision of the High Court, provides that the customary rent may be raised in the same ratio as that in which prices may have risen.

(3.) Where no prevailing rate for similar land held by a similar class of cultivators can be ascertained, and there is also no title proved to hold at any special rate, then the rate paid by tenants-at-will becomes the standard; and rents may be raised to the level of such rate, minus one-eighth or 12½ per cent.

The exact percentage will (if the Bill is favourably received) be a point proper for discussion in Committee. But the principle, that the hereditary ryot is entitled to hold at something below a rack-rent, appears to be generally admitted. It is true that in many parts of the country, the market rate may be synonymous with the rate by custom; it will be so where the demand of the landlord for ryots exceeds the demand by the ryots for land; it will also be the case generally in Native States or Provinces freshly brought under British administration, where (as before explained) the claim of the resident cultivator holding by recent possession has not yet been distinguished from, and become weaker than that arising out of, long possession. In all such cases the new rule now proposed will be inoperative.

But the tendency of our administration is to create a new class of tenants-at-will, entirely dependent on the pleasure of the landlord who can raise their rents at discretion on pain of ejectment. The rents of this class, in so far as there may be local demand for cultivating holdings, become strictly rents by competition. If under such circumstances, the market rate were adopted pure and simple, then the fixed and permanent character of the hereditary tenure, implying some small margin of beneficial interest such as will attach the ryot to his holding for better or for worse, would vanish. The landlord can by law issue notices of enhancement at discretion; and he would only have to produce offers from other quarters of an equal rent, stimulated possibly by accidental or temporary causes, to justify his enhancement. The course of legislation in

favour of hereditary ryots is naturally held to imply some protection more effectual than this. It has been generally admitted by experienced authorities that something must be conceded by equity and the custom of the country to the hereditary ryot,—something that shall keep his rent at an equable rate behind the varying and uncertain market rate of the day.

The proposed rule aims at accomplishing this object. By it the landlord will be able to raise the hereditary tenant's rent to the prevailing rack-rent of the day, minus 12½ per cent., allowing him, that is, a discount of two annas on the rupee.

It may be observed that the rule in itself presupposes that the cultivator has been holding at a rent lower than the standard proposed. Such lower rent would, from the very fact of its having previously obtained, be held under the present law (Act X, 1859, section V) a fair and equitable rent, "unless the contrary were shown." And it would, as the law now stands, hardly be possible for the landlord to prove the contrary,—there being no existing standard of fairness, beyond the prevailing rent of a similar class, which by assumption does not exist in the supposed case. The rule, then, is altogether in favour of the landlord, while it appears to afford every reasonable and equitable protection to the ryot.

It may also be noted that the rule gives no ground for the ryot to *claim abatement*, supposing his rent to be above the standard. Existing rents, if they exceed that standard, must be held to have been consented to by the ryot, and not to be open to question in our Courts. Hence it is proposed (section XII) to cancel the provision in Act XIV, 1863, allowing claims for abatement;—a provision which was passed for the North-Western Provinces, against the opinion of the Sudder Board of Revenue.

The general tendency of rent (excepting temporarily on account of drought, depopulation, &c.) is to rise. Had it been otherwise, some stipulation enabling hereditary cultivators to claim abatement to the market rate of the day, might have been expedient.

To resume: under the law, as it is proposed to modify it, there will be three standards of equitable rates, one or other of which can be applied by the landlord, according to the position of the ryot.

(1.) If the ryot belongs to a class which (whether from former proprietary title, or right of management, ancient possession, special agreement, or otherwise) is admitted to possess a title to hold at special rates, the landlord may sue to raise the rent of any individual paying less, to the level of such rates.

(2.) He may raise the rent of any cultivator in proportion to rise in the price of agricultural produce.

(3.) Where no special class rate is shown, and no personal privilege is proved, he may raise the rent of any hereditary cultivator to the market rate, *i.e.*, the rate of common tenants-at-will, minus 12½ per cent.

The two remaining conditions for enhancement are the same as in Act X, 1859; but the rule has been made more specific.

(4.) "Case fourth" is where the produce or productive power of the land has been increased otherwise than by the agency, or at the expense of the cultivator. In this case it is evident that the improvement having been brought about (as by the sinking of a well, or the introduction of canal irrigation) by no labour or expenditure of the cultivator, he has no right to a greater surplus or profit than he enjoyed before. The rule of proportion will not hold here; for it is not the money-value of the same corn-rent that is in question, but the value of a large corn-rent. The rule therefore lays down that the rent is to be increased on the whole value of the increased produce, less a deduction to cover increased cost, labour, and responsibility. This is the principle: but wherever rents of other similar lands in the vicinity have themselves become adjusted to the increased productiveness, Cases I and III will apply; and to follow rates already so adjusted will be simpler and more satisfactory. An investigation into the value of the increased produce will only be necessary where no such adjustment is found to have taken place.

(5.) "Case fifth," where the area has increased, or is proved to be greater in extent than the quantity for which rent has already been paid, is comparatively simple; the surplus land will be assessed at the same rate as the rest of the holding, or if it appears more equitable under Case I or III.

Draft Statement of Objects and Reasons on the Bill to amend Acts X of 1859 and XIV of 1863.

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No. 25.

Section VII provides that after a decision fixing the rent of a cultivator with right of occupancy, no fresh suit will lie under Cases I, II, and III, until the expiration of ten years. Something of this kind is required to give fixity to the tenant's interests, excepting where there may be accession of land or new conditions of increased productiveness.

Passing now to the other provisions of the Bill,—Section IX modifies section XXVIII, Act X of 1859. By the present law, a rent-free title enjoyed for twelve years grows up into an indefeasible right. This is quite proper (as against the proprietor, but not as against Government) where the land is held by an absolute grant from the proprietor. But throughout the country, lands are constantly assigned to Brahmins, servants, retainers, &c., on the understanding that they are resumable, or that some service or duty in return is to be performed. The rent-free holder is thus generally in the position of a retainer, swelling on proper occasions the retinue of the proprietor, and adding to his dignity. By the present law, after holding for twelve years, these become absolute proprietors free of rent, and not responsible even for revenue except in case of sale for arrears. It is proposed to modify this section, and to provide that *on every succession*, the new proprietor may sue to resume a holding so released by any predecessor. But the rent-free holder will be able to resist the suit by proving that the rent-free title was conferred upon him absolutely, in which case the twelve years' prescription would hold good without reference to successions in the proprietorship; and, generally, a rent-free possession of fifty years and two successions will constitute against the proprietor a rent-free title. But any such holding, unless exempted by the Government, will not be free from its liability to land revenue.

Section XXII provides that the Civil Code for the time being in force, shall, as far as applicable, be the rule of procedure in cases connected with rent. In the revised bill of civil procedure as amended in committee, this has been provided for by an indication of the sections to be applied to the Revenue Courts.

Sections XXIII to XXXIII refer to appeals. There has been some doubt and variety of practice in this department. Certain classes of orders are appealable to the Revenue Commissioner; while other orders and all judgments are appealable to the Civil Judge. It will be more uniform and convenient to make the appeal lie in all cases to the Civil Courts, excepting the class of orders belonging to sections XXV, XXVI and XXVII of Act X of 1859, in which the Collector acts administratively and not judicially. The provisions now proposed, at the instance of the Allahabad Board, will, besides removing doubts, be a material improvement in the law.

Sections XII to XXI contain amendments of Act XIV, 1863,—a law which relates only to the North-Western Provinces. That law made suits for profits and settlement of accounts between landed co-sharers to be cognisable exclusively by the Collector. It is admitted that, in all ordinary disputes simply as to share of profits, the Collector is, in the North-Western Provinces, the authority best qualified to decide. But it is obvious that such suits must often be connected with and dependent on questions of contested right in the property itself. Where such questions are involved, the case would be far more effectively investigated in the Civil Court. As the law now stands, the title to the property itself would be cognisable by the Civil Court; and that for profits dependent on the title, exclusively by the Collector.

With the view therefore of avoiding conflicting decisions, and also of relieving the Collector of the trial of suits entangled with questions of right, it is proposed to remove the restriction which gives him exclusive jurisdiction in suits for profits. The Collector will thus be at liberty to refer suitors preferring such claims to the Civil Courts; and these Courts will have power to remove cases of this kind from the Collector's Court to their own, whenever suits involving the same issues may already have been laid in the latter.

Sections XII and XIV relate to the practice of rent paid in kind. In suggesting these provisions the Sudder Board of Revenue at Allahabad made the following observations:—

"The system of rents in kind or by appraisement of crops, though suited to a rudimental state of society, is accompanied by many evils, which, in the progress of civilisation, render it a matter of high expediency to promote the substitution of money-rents. The division of crops is a source of frequent quarrelling and dissension: it places the cultivator often at the mercy of an unscrupulous landlord, or the landlord at the mercy of turbulent cultivators: it represses independent action by the necessity of frequent interference on the part of Government officials

to compose disputes; and generally by not rendering the cultivator, the sole recipient of the fruits of his labour, subject to the payment of a known and fixed rent, it diminishes the incentives to industry and improvement, and has a depressing influence on agriculture.

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No. 26.

"Besides these general considerations which are continually in operation (and which induced the Board under the old Summary Suit Law, to direct the entertainment of applications for commutation at the instance of either party), there are special causes sometimes at work which render it necessary that the authority to enforce commutation should be vested somewhere. Such a cause is the introduction of canal irrigation, which, by rendering the produce of the soil certain, and affording permanent facilities for the higher kinds of crop, forms an equitable ground on which the zemindar may claim an enhanced rent to be paid in money,—in substitution of his present title to a share in any common crop which a careless cultivator may prefer to grow. So in tracts of country bordering upon jungles, where the system of payment in kind was originally, followed, in consequence of the uncertainty of the returns one year with another, in the progress of the country and advance of cultivation, this reason may no longer exist, and there should be the power somewhere vested to hear the claim of either party for substituting money-rents in lieu of this primitive practice.

"The Board are accordingly of opinion that (as proposed by them in bringing forward the draft of section 13, Act XIV, 1863) the power of trying claims for commutation, and adjusting money-rents at a fair and equitable sum, and granting pottahs accordingly under section 5, Act X of 1859, should be permanently vested in the Collector's Court.

"A discretionary power of refusing the application wherever the crops are shown by the objector to be liable from special cause (as vicinity to jungles, prevalence of wild beasts, &c.) to much uncertainty, should be reserved to the Collector."

The Government of India raised a question as to the propriety of granting this power under all circumstances. It is admitted that the measure, however important, must not be urged prematurely, and its operation must be carefully watched. In the section as now drawn, a full discretionary power has been reserved to Government, both in respect of the districts to which the operation may extend, the officers to be invested with authority for the purpose, and principles on which they are to proceed.

Sections XIV and XV have been added to provide for the numerous classes of disputes that arise between landlord and tenant as to the division, estimate, and appraisement of crops, where rent is taken in kind or its equivalent. The zemindar can harass his tenant by neglecting to be present, by thus preventing the crop being cut to the injury of the tenant, and by bringing exorbitant claims afterwards for his alleged share. The tenant can similarly harass the landlord by refusing to come to terms, and in the absence of a legal referee may often baffle him successfully. Provision has been made for an authoritative settlement in such cases.

The provisions of the new law would extend (in like manner as those of Acts X of 1859, and XIV of 1863) to the Regulation districts of Bengal and to the North-Western Provinces. They would probably be also applicable to the Punjab and the Central Provinces. In respect of other parts of the country, the Bill empowers the Governor General in Council and the Local Governments to extend the rent law thus amended to any territory under their administration; but it is left open to them to modify any portion of sections 6 and 17, Act X, 1859 (relating to the conditions for establishing an hereditary right of occupancy, and of enhancing rents), which may be found to conflict with the rights of proprietors as already declared, or with the local custom of the country. To admit of full and timely objection being urged against such extension of the law, previous notice is required to be published in the *Gazette* for three months.

Should this Bill be favourably entertained, it may be expedient to alter its form by consolidating it with the laws which it amends, in one Act. This can be done, if necessary, in Committee.

The 10th July 1865. W. MUIR.

Letter from E. C. Bayley, Esq., to Local Governments, Nos. 594—598, dated the 1st August 1865.

No. 27.

Nos. 594—598, dated Simla, the 1st August 1865.

From—E. C. BAYLEY, Esq., *Secretary to the Government of India*, HOME DEPT.,
To—*The Secretary to the Government of Bengal.*
" " " " *North-Western Provinces.*
" " " " *Punjab.*
" *Chief Commissioner of Oudh.*
" " " *Central Provinces.*

I AM directed to forward a copy of each of the papers noted in the margin, and to request that His Honour the Lieutenant-Governor / you will have the goodness to consider them, and to favour the Governor General in Council with an early expression of his / your opinion thereon.

A Bill "to amend Acts X of 1859 and XIV of 1863."
Draft Statement of Objects and Reasons.

Letter from E. C. Bayley, Esq., to Madras and Bombay, Nos. 599 and 600, dated the 1st August 1865.

Nos. 599 & 600, dated Simla, the 1st August 1865.

From—E. C. BAYLEY, Esq., *Secretary to the Government of India*, HOME DEPT.,

To—*The Secretary to the Government of Bombay.*

" " " " *Fort St. George.*

I AM directed to forward a copy of each of the papers noted in the margin, and to request that the Governor in Council will have the goodness to favour the Governor General in Council with any remarks or suggestions that may occur to His Excellency in Council on the provisions of the proposed law.

A Bill "to amend Acts X of 1859 and XIV of 1863."

Draft Statement of Objects and Reasons.

Letter from the Government of India, to the Secretary of State, No. 10, dated the 31st July 1865.

No. 10, dated Simla, the 31st July 1865.

From—*The Government of India,*

To—*Her Majesty's Secretary of State for India.*

WE have the honour to forward to you the accompanying copy of a "Bill to amend Acts X of 1859 and XIV of 1863," and a "Draft Statement of Objects and Reasons" prepared by our direction; and to state that copies of the documents have been confidentially sent to the Local Governments and Administrations for their opinion.

Letter from the Chief Commissioner of the Central Provinces, to the Home Department, No 3433—307, dated the 1st September 1865.

No. 3433—307, dated the 1st September 1865.

From—*The Secretary to the Chief Commissioner, Central Provinces,*

To—*The Secretary to the Government of India*, HOME DEPARTMENT.

IN reply to your letter No. 598 of the 1st instant, calling for the opinion of the Officiating Chief Commissioner on the "draft Bill to amend Acts X of 1859 and XIV of 1863," with its Statement of Objects and Reasons therewith forwarded, I am desired by Mr. Campbell to communicate as follows for the information of His Excellency the Governor General in Council.

2. Generally, the Officiating Chief Commissioner concurs in the amendments prepared. But he would suggest, with reference to section 4 of the Draft Bill fixing the close of the month of Jeth as the time when, after three months' notice, any ryot may relinquish land held or cultivated by him, or any proprietor may eject a tenant not having a right of occupancy, that power may be taken for Local Governments and Administrations to fix any other month of the year at the close of which relinquishment by ryot or ejectment by proprietors may take place. The reasons for this recommendation are that agricultural operations begin earlier than the close of Jeth, and at different times in different districts and for different crops; and as arrangements for entering upon such operations have to be made earlier still, as early as the 1st Bysack in some parts of the Central Provinces, it seems necessary that some latitude be allowed to Local Governments and Administrations for fixing the period at which relinquishments and ouster may be permissible with due regard to the circumstances of each locality.

Letter from W. Hudleston, Esq., Secretary to the Government of Madras, to the Home Department, No. 2222, dated the 15th September 1865.

No. 2222, dated the 15th September 1865.

From—W. HUDLESTON, Esq., *Acting Secretary to the Government of Madras,*

To—*The Secretary to the Government of India*, HOME DEPARTMENT.

I HAVE the honour to acknowledge receipt of your confidential letter No. 600, dated 1st August 1865, forwarding, for the remarks of this Government, a Draft Bill to amend Acts X of 1859 and XIV of 1863, and am directed, in reply, to state that this Government, while observing that the Bill is intended to apply only to the territories under the direct control of the Government of India, and under the Governments of Bengal, of the North-Western Provinces, and the Punjab, and while feeling themselves incompetent to judge of its suitability to those parts of the country, can only form an opinion of the general expediency of the proposed measure by considering it in connection with the state of things that exists in this Presidency.

2. So viewed, this Government consider that to declare all zemindari ryots of less than twenty years' occupancy, either personally or by inheritance, mere tenants-at-will, and where they have hereditary rights of occupancy to

subject them to any rate of rent 12½ per cent. short of a rack-rent, would, in this Presidency, be productive of monstrous injustice; would disturb the relations between zemindar and ryot; and excite discontent and disaffection in all our zemindari districts. The provisions of the Bill in fact are utterly unsuited to the circumstances of this Presidency, and would be absolutely subversive of rights established since 1802.

Letter from W. Hudleston, Esq., Secretary to the Government of Madras, to the Home Department, No. 2222, dated the 15th September 1865.

3. The Bill to consolidate and improve the law for the recovery of rent in this Presidency, which is now under the consideration of His Excellency the Governor General, indicates the course which this Government approve for the attainment of the objects contemplated by the Bill under reference, and in a recent letter certain objections to its details which occurred to the Supreme Government, have been combated with, it is hoped, success.

Legislative Department, No. 324, dated 16th August 1865.

4. I am directed to request a reference to these papers, as fully expressing the views of this Government on the relations of landlord and tenant, and zemindar and ryot, as they exist in this Presidency, and on the provisions which the Government deem necessary and expedient for dealing with them.

No. 4490, dated the 31st October 1865.

From—H. Birdwood, Esq., *Under-Secretary to the Government of Bombay,*

To—*The Secretary to the Government of India,* Home Department.

Letter from H. Birdwood, Esq., Under-Secretary to the Government of Bombay, to the Home Department, No. 4490, dated the 31st October 1865.

In reply to your confidential letter No. 599, dated the 1st of August last, I am directed to state that, as Acts X of 1859 and XIV of 1863 are not in force in Bombay, His Excellency the Governor in Council fears that any opinion he might offer on the proposed Bill to amend them would not be of much value.

2. If, however, it is the wish of the Government of India to ascertain whether a similar law is required in this Presidency, then I am desired to state that the provisions of the Bombay Survey Act 1 of 1865 will, it is expected, be found amply sufficient to meet all the requirements of our revenue administration.

No. 1156A., dated the 8th December 1865.

From—R. Simson, Esq., *Secretary to the Government of the North-Western Provinces,*

To—*The Secretary to the Government of India,* Home Department.

Letter from R. Simson, Esq., Secretary to the Government of the North-Western Provinces, to the Home Department, No. 1156A., dated the 8th December 1865.

I am directed to acknowledge receipt of your letter No. 595 of the 1st August, with its enclosures, having reference to the proposed amendment of Acts X of 1859 and XIV of 1863.

2. In reply I am desired to forward a copy of the papers noted in the margin, and to submit the following remarks for the consideration of His Excellency the Governor General in Council.

Secretary, Sudder Board, No. 601, of the 30th August, with enclosures.
Registrar, Sudder Court, No. 2299, dated 9th October, with enclosures.

3. The Lieutenant-Governor has already recorded his opinion on the subject of Act X of 1859, in so far as regards section 6 of that Act, and the question of prescriptive right of occupancy.

4. Up to 1859, a ryot who had occupied his holding undisturbed as a hereditary cultivator for 12 years, could not be ejected, or have his rent enhanced above the rate paid by similar ryots in adjacent fields, by summary suit, but only by a regular Civil suit; Act X of 1859, however, extended this prohibition to regular as well as to summary suits.

5. As the rule in summary suits, it had never been objected to, and if any alteration is made in section 6, His Honour would prefer the express enactment of the previous rule, leaving disputed cases of hereditary tenure to be settled each on its own merits, in the Civil Courts, according to the custom of the locality. To do more is, in the opinion of the Lieutenant-Governor, only to go farther in a false move.

6. His Honour does not concur in the amendment of section 2 of the proposed Bill, which is suggested by Mr. Thornhill. He doubts the propriety of restricting the benefit of prescriptive right of occupancy to resident ryots, as he understands there are known cases of such rights being actually in existence in the case of non-resident ryots, and Government ought not injuriously to affect such rights by abstract legislation.

Letter from R. Simson, Esq., Secretary to the Government of the North-Western Provinces, to the Home Department, No. 1156A., dated the 8th December 1865.

7. *Section 8 of proposed Bill.*—Suits for declaration and maintenance of right of possession ought, in His Honour's opinion, also to be allowed.

8. *Section 15.*—The words "or other trustworthy person or persons," should be added after "may depute an officer of his establishment."

9. Section 20 ought apparently to be expunged, as section 153 of Act X is repealed by section 24 of the proposed Bill.

10. A power might also with advantage be given to Collectors to determine suits under the Act by arbitration, as provided in Regulations VII of 1822 and IX of 1833.

11. Subject to the above remarks, the Lieutenant-Governor approves generally of the other provisions of the proposed Bill.

Letter from W. C. Plowden, Esq., Secretary to the Board of Revenue, to the Government of the North-Western Provinces, No. 601, dated the 30th August 1865.

No. 601, dated Allahabad, the 30th August 1865.

From—W. C. PLOWDEN, Esq., *Secy., Board of Revenue, N.-W. Provinces,*

To—*The Secretary to the Government of the North-Western Provinces.*

IN reply to your No. 809A, dated 19th instant, giving cover to Mr. Secretary Bayley's No. 595, dated 1st idem, I am desired by the Board of Revenue to submit the enclosed Minutes (on a Bill to amend Acts X of 1859 and XIV of 1863) drawn up by the Senior and Junior Members of this Board.

Minute, dated the 26th August 1865, by R. Money, Esq., Senior Member of the Board of Revenue, North-Western Provinces, on the Bill to amend Acts X of 1859 and XIV of 1863.

MINUTE on a Bill to amend Acts X of 1859 and XIV of 1863, by R. MONEY, Esq., *Senior Member of the Board of Revenue, North-Western Provinces, dated 26th August 1865.*

I APPROVE of Mr. Muir's Bill to amend Acts X, 1859, and XIV, 1863, nearly all the provisions being in accordance with the recommendations that have been made by the Board.

2. Section 20 (regarding the applicability of the provisions of section 153, Act X, 1859) is apparently superfluous, as it is proposed to repeal section 153 of Act X, and the provisions regarding appeals in sections 25 *et seq.* of the Bill, which I drafted for inclusion in the Bill formerly submitted, supersede the necessity of extending the provisions of section 153 to suits under Act XIV, 1863.

3. I have read the Minute which has been recorded by my colleague, Mr. Thornhill. His recommendation that prescriptive right of occupancy should accrue from continued occupancy of one life for 30 years, deserves serious consideration; but I would support the rule which requires one succession. A landlord might allow a tenant-at-will to retain cultivating occupancy for the term of his life, but it appears to me only equitable that he should be allowed the option of disposing of the land after the tenant's death. If he allow the heir to succeed, he acquiesces in the occupancy right.

4. I entirely concur in Mr. Thornhill's recommendation that residence should be a condition essential to the acquisition of the right of tenant occupancy. The terms of section 6, Act X, 1859, are so general that they necessarily include pyekhast ryots. It is only in the absence of resident cultivators that cultivators are invited from neighbouring estates, and obviously the landlord should have it in his power to dispense with them when he can locate cultivators on his own land.

Minute, dated the 26th August 1865, by C. B. Thornhill, Esq., Officiating Junior Member of the Board of Revenue, North-Western Provinces, on the Bill to amend Acts X of 1859 and XIV of 1863.

MINUTE on a Bill to amend Acts X of 1859 and XIV of 1863, by C. B. THORNHILL, Esq., *Officiating Junior Member of the Board of Revenue, North-Western Provinces, dated 26th August 1865.*

THE primary object of this Bill is to relieve the landholder from the hardship to which he has been subjected under Act X of 1859 by the creation of rights of occupancy after 12 years' continuous cultivation of the same land by a tenant-at-will.

2. There is no doubt that on the first passing of Act X this newly-created right was viewed by zemindars as a heavy grievance, but apparently this feeling has undergone some degree of modification.

3. There are certain practical advantages to the landholder in having his lands cultivated by those who possess an interest in the welfare of the village which go far to counterbalance the diminution of his power as proprietor.

Minute, dated the 26th August 1865, by C. B. Thornhill, Esq., Officiating Junior Member of the Board of Revenue, North-Western Provinces, on the Bill to amend Acts X of 1859 and XIV of 1863.

4. Whatever increases the value of land to a tenant must, in the majority of cases, increase its value to the landlord also, provided that the equitable share in the profits is secured to the latter, and this is done in the Bill under consideration.

5. A tenant with rights of occupancy is a fixture in the village; he builds himself a good house, and is punctual in payment of his rent.

6. The tenant without rights of occupancy lives as he best can from year to year, and on the occurrence of any disastrous season, usually removes himself beyond the reach of the landlord without paying his rent.

7. Even in ordinary years the landlord is not free from anxiety on account of the rent of the non-proprietary class, and has frequently to incur considerable expense and vexation in watching the ripening crops, and guarding against their surreptitious removal.

8. According to the principle of the proposed Bill, the landholder will receive 12½ per cent. less from a village cultivated by tenants with rights of occupancy, than he would from the same village if cultivated by tenants without such rights, and it would not be difficult to prove that in the majority of cases the gain to the zemindar, from the certainty of his receipts, and the absence of outlay in collecting them, would be represented by a larger percentage than 12½.

9. But instances have come within my knowledge of zemindars voluntarily conferring rights of occupancy and the cultivators readily consenting to a very considerable enhancement of their rents in consideration of the permanency of the title conferred on them, so that the landholder in practice receives more under a system of cultivation by tenants with rights of occupancy than by rack-renting tenants-at-will.

10. As, then, the benefits arising out of the conferment of cultivating rights of occupancy are not limited to the cultivator, but are also shared by the landholder, I should be disposed to relax the proposed amendment by omitting the word "which has descended to him by inheritance" from section II, and making 30 years, instead of 12 years' continuous occupancy, the term of prescription.

11. I think, moreover, that the rights should be restricted to *resident* cultivators, and would re-introduce this word which was used in the first draft of Act X.

12. Section II would then stand—"Every resident ryot, cultivating or holding land, has a right of occupancy in the land so cultivated or held by him, provided that the possession by himself, and some other person or persons from whom he has inherited, shall have lasted continuously for not less than thirty years."

13. The restoration of the word "resident" is apparently in accordance with the intention of the framers of the original Bill, for although, as the law now stands, non-resident cultivators can obtain rights of occupancy, their doing so is so directly in contravention of the custom of many villages as recorded in the administration papers, that it would not appear to have been the intention of the Legislature to concede to them this novel privilege.

14. The limitation of the prescription to inherited occupancy would apparently operate as a discouragement to the cultivator, by rendering it impossible for any man to acquire such right for himself even by a life-time devoted to laborious industry, and by leaving it doubtful and optional with the landlord whether the son should derive any benefit from the long occupancy of his father, an incentive to good conduct would thus be withdrawn.

15. A landlord would be disinclined to lose the services of a steady and industrious tenant, and would therefore refrain from any interference with his holding which would have the effect of driving him from the village. If the tenant knew that persistence in a course which rendered him useful and valuable to his landlord would in the end obtain for himself a right of occupancy in his holding, it would afford a motive for perseverance which will not exist under the proposed law, and the long period of 30 years which is equivalent to one generation in the ordinary acceptation of the word, would afford the landholder ample opportunities of preventing the acquisition of the prescriptive right, should he find it to his advantage to exercise his power of interference.

16. The remaining provisions of the Bill appear to provide effectual remedies for the defects which experience has detected in the previous enactments.

Minute, dated the 26th August 1865, by C. B. Thornhill, Esq., Officiating Junior Member of the Board of Revenue, North-Western Provinces, on the Bill to amend Acts X of 1859 and XIV of 1863.

17. The withdrawal of the ryot's right to claim abatement of rent is very desirable. This has been proved by tenants who, after 10 years' occupancy, have had their rents raised equitably, claiming abatement to the standard of adjacent mowroosee cultivators, so soon as the expiration of their 12 years' occupancy had given them a similar status.

18. It would be very desirable that the Rent Acts should be consolidated into one law, as is proposed in the concluding paragraph of the Statement of Objects and Reasons.

Letter from J. D. Sandford, Esq., Officiating Registrar of the Court of Sudder Dewanny Adawlut, North-Western Provinces, No. 2299, dated the 9th October 1865.

No. 2299, dated Agra, the 9th October 1865.

From—J. D. Sandford, Esq., B.A., *Offg. Registrar to the Court of Sudder Dewanny Adawlut, N.-W. Provinces,*

To—*The Secretary to the Government of the N.-W. Provinces.*

In reply to the orders of Government, No. 808A., dated 19th August last, I am directed to forward, for submission to the Hon'ble the Lieutenant-Governor, the enclosed copies of Minutes recorded by Messrs. Edwards and Pearson, on the provisions of the Bill "to amend Acts X of 1859 and XIV of 1863."

2. Mr. Robert's remarks will be found on the margin of the accompanying copy of the Bill and Draft Statement of Objects and Reasons, which I am desired to forward in original.

Minute by W. Edwards, Esq., on the Bill to amend Acts X of 1859 and XIV of 1863.

Minute by Mr. W. Edwards *on the Bill to amend Acts X of 1859 and XIV of 1863.*

Section 2.—I am and have ever been opposed to Government intervention between landlord and tenant in the manner proposed in this section. It is proceeding on the assumption, that there is a necessary antagonism between the parties, and to save the tenant from injury or indeed destruction, it is necessary to interfere between them and his landlord by legislative enactments. This appears to me an error, for the dealer in land in India, as everywhere else, is, to a certain extent, very much in the position of every other dealer in any other commodity, and it is clearly to the landlord's advantage to deal well and fairly by his customers, his tenants, while for the Government to interfere in the manner we have hitherto done to fix the amount of rent, and as is now proposed by this law, is to put into a state of antagonism two parties mutually dependent on each other. Whereas by leaving them to themselves to make their own arrangements, a good and improving tenant will never be removed from his holding, for it is clearly the proprietor's interest to retain him in that capacity on his land. The proposed enactment, or any other having a similar object, I apprehend will have the effect of destroying the very rights it is thereby sought to create and perpetuate, as proprietors will never in future permit rights of occupancy to grow up, which will practically amount to a confiscation of their rights as proprietors. I am well aware that this view is not likely to be received favourably, and I would not intrude it, had not my opinion been asked. If the law be, as it most likely will be, permitted to stand, I would certainly omit the lines quoted in the margin, as opening a new door for litigation. If the proprietor consents, he will not hesitate to give a writing such as is required under section 5, and this will be sufficient for all purposes. If this portion of the section remains, I should fear that no ryot can ever hope to obtain other fields from the same proprietor if once dispossessed by any means of those he has hitherto held.

"Where a cultivator having the right of occupancy shall, with the consent of the proprietor, have exchanged any land in respect to which such right exists, for any other land belonging to the same proprietor, such varied occupancy shall be held to be continuous occupancy."

Section 3 seems to me uncalled for and likely to neutralise any advantage the proprietor might derive from the extension of the period from 12 years to 20 by the previous section 2.

Section 6, last clause.—In this clause the words "the fields adjoining or the nearest, or in the same village, or in the villages adjoining or to signify," may be inserted between the words "to *signify*" and "*such extent.*"

Section 9.—In the proposed amended section 28 of Act X of 1859, for the words "provided further that rent-free possession for fifty years, including two successions, shall vest in the grantee or his representative a proprietary right in the land so held," may be substituted "or the grantee shall prove his rent-free uninterrupted possession for the last sixty years;" and the words "*length of rent-free occupancy, nor any*" further on, omitted.

The following explanation may perhaps be added to this section:—

Minute by W. Edwards, Esq., on the Bill to amend Acts X of 1859 and XIV of 1863.

Explanation.—Lands held without payment of revenue through fraud or the negligence of the landholder, which had once been brought under assessment or have been recovered from the waste and jungle, do not come under the foregoing section. The landholder can apply to the Collector under clause 1, section 23, Act X of 1859, to assess such lands according to case 1st or 3rd of section 6 of this Act, at any time he pleases without limit (*vide* Circular Order, Sudder Board of Revenue, No. 27, dated 17th October 1863, Government Gazette, dated 21st October 1863).

Section 19.—In this section there is apparently a clerical error, "*Section 19*" having been written for "*Section 17*" in the body.

Minute by Mr. F. B. Pearson *on the Bill to amend Acts X of 1859 and XIV of 1863*

Minute by F. B. Pearson, Esq., on the Bill to amend Acts X of 1859 and XIV of 1863.

Section 2.—This section is merely arbitrary legislation, and involves the admission that, although custom may have conferred a right of occupancy on ryots whose occupancy had been of long duration, custom had never precisely defined the length of occupancy necessary to create the right. Section 6, Act X of 1859, and section 2 of the present Bill cannot both be declaratory of rights constituted and fixed by custom. It would seem that a term of three years was originally proposed as the term of prescription for a resident ryot; but that 12 years (without reference to residence) was deemed a "more appropriate" term, and the new proposition under consideration is simply an attempt to effect a compromise between the opinions of those who desire to maintain the ryots in their present position, and those who desire to enlarge the powers and improve the position of the zemindars. The question in short is one not of right but expediency. Seeing how much the existing status of both parties is the result of our legislation, there may be some excuse for this sort of interference with the relations between them; but it is obvious to remark that the *prospective* operation of the proposed enactment, as of that which it will supersede, can always be more or less neutralised by the zemindars taking care to prevent the growth of any rights of occupancy not now in being. Should this section be enacted, a question might arise, whether a ryot who had been adjudged to have a right of occupancy under section 6, Act X of 1859, on the ground of having occupied his land for thirteen years, could again be adjudged to be a tenant-at-will, because his occupancy had lasted less than 20 years, or because the land had not descended to him by inheritance. It seems rather hard that a ryot who has himself held land continuously for half a century should be regarded as a tenant-at-will, because his father did not hold it before him. The distinction made between such a person and a ryot who has acquired by inheritance his father's holding of 20 years' length, is striking and not manifestly equitable. The proposed section is as favourable to the zemindars as that which it will supersede is favourable to the ryots.

Section 4.—Section 4 appears unexceptionable and expedient.

Section 5.—Section 5 is section 7 of Act X of 1859 re-enacted.

Section 6.—What is meant by the same class of cultivators? Does the law contemplate only two classes, one, ryots having a right of occupancy, the other, tenants-at-will; or does it recognise a distinction between high caste and low caste cultivators? This Court has held that the latter distinction is recognised.

The rules laid down in this section and the general proviso appear fair. This Court has already ruled "places adjacent" to signify what the words are explained to mean.

Section 7.—I approve of this section.

Section 8.—Supplies what were presumably inadvertent omissions in clauses 5 and 6, section 23, Act X of 1859.

Section 9.—Proposes a most necessary amendment of section 28, Act X of 1859. The awkward words "or of some person claiming under him," which made so much difficulty before, have been eliminated. It is presumable that the word "representatives" includes private purchasers or purchasers in execution of a decree. But the words "grants for holding land exempt from the payment of revenue" may still leave room for doubts. Are written grants, sunnuds, meant? Suppose the land has been held *rent*-free, but that the revenue has been paid by the zemindar and not by the holder, would the section then be inapplicable to the case?

Minute by F. B. Pearson, Esq., on the Bill to amend Acts X of 1859 and XIV of 1863.

Section 10.—Section 10 apparently rules that suits under section 28 are not *summary* suits, as we and the late Calcutta Sudder Court held to be; but *regular* suits, cognisable, though not exclusively, by the Revenue Courts, agreeably to the view taken by the Calcutta High Court.

Section 11.—Section 11 is rendered necessary by section 9.

Section 12.—No reason for the proposed modification of section 3, Act XIV of 1863, is assigned; and there seems to be no reason in equity why suits for abatement should not be entertained as well as suits for enhancement, on the ground that the rate is above or below the rate payable by the same class of ryots for land of a similar description and with similar advantages, in the places adjacent, within the limit proposed in section 7 in cases in which there has been no decision under the Act, fixing an enhanced rent or a fair and equitable rent.

Section 13.—This Court has held that suits for the commutation of rents in kind to fixed payments cannot be brought by tenants-at-will, holding from year to year. If they held for a term of years under a lease, it would probably be held that they could demand a commutation for the term of the tenure, but a question might arise whether an express stipulation to the contrary in the lease could be over-ridden.

Section 14 and 15.—I have no objection.

Section 16.—I approve of the amendment of the 1st clause in and the addition of the 5th clause to section I, Act XIV of 1863.

Sections 17, 18 and 19.—I see no objection to the modification of the existing rule proposed in these sections.

Section 20—Appears quite proper.

Section 21—Section 37, Act X of 1859, is only shown as "repealed" in my copies of the Act.

Section 22—Appears desirable.

Section 23—Calls for no remark.

Section 24 and following are, I suppose, mainly intended to repair the omission in Act X of 1859 to provide for appeals from orders passed in the execution of decrees passed in suits under the Act—an omission which we brought to the notice of the Government.

I do not care to offer any more remarks. The main question as to whether it is desirable to legislate in favour of the zemindars or of the ryots, is one of policy and political economy, and belongs more to the revenue authorities and the members of the Government than to this Court.

22nd September 1865. F. B. PEARSON,

P. S.—It occurs to me to add that a definition of the term "rent" in clause 4, section 23, Act X of 1859, might be useful. We have held that suits for the rent of land in towns and cities, which have not been subjected to settlement, do not come within the scope of the Act which is intended to provide for the adjudication of disputes relating to land rent between zemindars and ryots in settled mehals; but I believe that the Calcutta High Court take a different view of the point in question.

F. B. P.

Letter from R. Simson, Esq., Secretary to the Government of the North-Western Provinces, to the Home Department No. 315A., dated the 5th May 1866.

No. 315A, dated Nynee Tal, the 5th May 1866.

From—R. SIMSON, Esq., *Secretary to the Govt. of the N.-W. Provinces,*

To—The Secretary to the Government of India, HOME DEPARTMENT.

IN continuation of my letter No. 1156A., dated 8th December last, which communicated the remarks of this Government on the draft Bill for the amendment of Acts X of 1859 and XIV of 1863, I am desired to state, for the information of His Excellency the Viceroy and Governor General in Council, that the Board of Revenue, North-Western Provinces, have urgently represented the importance of obtaining a final settlement of the points upon which legislative action is contemplated, more especially that of the acquisition of rights of cultivating occupancy.

2. The actual commencement of the revision of settlement in many districts, and its near approach in many others have, they observe, invested the

subject with prominent interest, the cultivators being anxious to substantiate, and the zemindars to contest, claims to rights of occupancy based upon the limitation prescribed by Act X of 1859. If the period of occupancy necessary to the acquisition of such rights is extended in the manner proposed in the draft Bill, the greater part of the contention between zemindars and cultivators will be removed.

Letter from R. Simson, Esq., Secretary to the Government of the North-Western Provinces, to the Home Department No. 315A., dated the 5th May 1866.

3. The decision of the question of limitation will also, it is stated, materially affect the arrangements now in progress for the settlement of the Family Domains of the Maharajah of Benares.

4. The remarks of the Board on the necessity for immediate action have, I am to state, the entire concurrence of the Lieutenant-Governor. If the cause of delay has arisen beyond the limits of these provinces, His Honour submits that uniformity on such a matter throughout the Indian territories is not to be expected, and he would therefore request that a separate Rent Law be enacted for these provinces, where the question is ripe for decision, and delay is productive of injurious agitation among the agricultural classes.

5. I am at the same time to add that, although for the reasons given in the letter No. 1156A., dated the 8th December last, His Honour would prefer a limitation of 12 years; yet there is no great objection under the existing circumstances of these provinces to its extension to 20 years.

6. It seems to the Lieutenant-Governor unjust to put a ryot, who may have had 50 years' continuous possession in a worse position than one who has held for a much shorter period with one succession, and section 2 of the draft Act might therefore, in his opinion, be replaced with advantage by the following:—

"Every ryot, claiming to be a mouroosee ryot, who has either himself, or in the person of others from whom he has inherited, cultivated or held land continuously for a period of 20 years, has a right of occupancy in the land so long as he pays the rent payable on account of the same.

"Provided that this section shall not apply to khamar, nijjote, or sír land appertaining to the zemindar, nor (as respects the actual cultivator) to land sublet for a term, or year by year by a ryot, having a right of occupancy."

7. Section 3 of the draft Act should then be omitted.

No. 491A., dated Nynee Tal, the 26th June 1866.

From—R. SIMSON, Esq., *Secretary to the Govt. of the North-Western Provinces,*

To—*The Secretary to the Government of India,* HOME DEPARTMENT.

Letter from R. Simson, Esq., Secretary to the Government of the North-Western Provinces, to the Home Department, No. 491A., dated the 26th June 1866.

IN continuation of the letter from this Department, No. 315A., dated the 5th ultimo, I am directed to forward, for submission to His Excellency the Viceroy and Governor General in Council, the accompanying copy of a Minute recorded by the Junior Member of the Board of Revenue in these Provinces as at present constituted, on the subject of the proposed amendment of Act X of 1859, and which, coming as it does from an officer of such great and varied experience in Revenue matters as Mr. Cust, merits consideration.

2. The Lieutenant-Governor is disposed to concur in Mr. Cust's proposition for providing the means of extinguishing the right of occupancy.

3. In other respects, Mr. Cust's opinion differs but little from that which His Honour has already on various occasions placed on record.

4. The Lieutenant-Governor has not advocated the cancellation of section 6 of Act X of 1859, which appeared to him unnecessary, as every landholder can render it nugatory by entering into a written agreement with his tenant.

MINUTE by R. N. CUST, Esq., *Junior Member of the Board of Revenue, North-Western Provinces, on the subject of proposed modification of Act X of 1859, dated 25th May 1866.*

Minute, dated the 25th May 1866, by R. N. Cust, Esq., Junior Member of the Board of Revenue, North-Western Provinces, on the proposed amendment of Act X of 1859.

I HAVE become aware, from the perusal of the letter of Secretary to Government, No. 316A., of May 1866, to the address of the Board, that it is proposed to amend this Act; but on inquiry in the office I have been unable to get a sight of the Bill, which has been forwarded to the Government of India, no copy having been left on record in this office.

I think it my duty to place on record my views on the subject.

Minute, dated the 29th May 1860, by R. N. Curt, Esq., Junior Member of the Board of Revenue, North-Western Provinces on the proposed amendment of Act X of 1859.

I gather that the main points of amendment contained in the Bill are—

I. A new legal definition of the status of a cultivator with a right of occupancy.

II. An arbitrary mode of fixing the rent to be paid by such cultivator.

I cannot express my concurrence in either of these two propositions.

I am, however, entirely in favour of cancelling section 6 of Act X of 1859, by which the mere lapse of time converts a tenure of one kind into another of a perfectly dissimilar character.

I admit, as a fact, that in these provinces there exists a numerous class of cultivators, whose rents are not absolutely fixed, but whose occupancy cannot be disturbed, in the event of their paying a rent susceptible of legal fixation. It is unnecessary to inquire whether this class came into existence under British rule, or whether their maintenance is consistent with sound principles of political economy or not; it is sufficient for us *that they do exist.*

But emphatically they are creations of custom, and not of strict law; they are encroachments on the strict right of property, which grew up tacitly during a system of imperfect record of rights, or none at all, and it is out of reason to allow them to be created by lapse of time under a system of accurate record: if such a principle were applied to house property, the most bigoted advocate would pause.

I would gladly see section 6 cancelled, but no other terms of limitation introduced in its place. It should be left to the Courts of Law to ascertain the custom in each case, and decide accordingly. We cannot at this moment say what will be the consequence of the new limitation; it is quite as arbitrary as the old one. Ten years ago Mr. Thomason proposed twelve years; Mr. Muir suggested twenty years; now thirty is proposed; and yet all this is the definition of a so-called customary right, the very essence of which is that the right has been deduced from a well-ascertained custom of a particular locality. My advice is that we leave this to settle itself under the loose discipline of decisions of Court, as all customary rights have been decided in England.

Still more objectionable appears the arbitrary definition by rule of thumb of the amount of rent to be paid by a customary tenant. It will be very convenient of course, and greatly facilitate the rapid decision of suits, but no landowner will approve of such a sweeping disposal of their rent difficulties. To me it seems far better to leave this matter also to the Courts. In each district some principles would be gradually evolved not necessarily the same for all time or all place, but any attempt to regulate rent by law appears to be a move in the wrong direction.

Accepting, as stated above, the existence of the right of occupancy as a fact, I do not think that any measure would be complete which did not provide a machinery for the extinguishment of it, in order that the land may be freed from an encumbrance, which stands in the way of the development of its powers by the application of capital. As in the analogous case of the lessees of capitular estates in England, it should be in the power of the proprietor to enfranchise his land by buying out the encumbrancer, and of the cultivator to convert his right of occupancy into a right of property by buying out the holder of the superior right. As it is now, masonry wells cannot be sunk because one party is not allowed to spend capital, and the other party has no object to do so. The whole estate is supposed to be hypothecated for the revenue of Government, but the responsible proprietors have only the full value of a portion:—to allow such a system to continue with no available remedial measure would be a blunder,—to allow it to extend itself, under section 6 of Act X of 1859, is worse than a blunder.

I would therefore empower the Collector, either on the petition of the landowner or the cultivator, to arrange a composition, by which one of the two rights will be extinguished upon the receipt by the one party of the full property and occupancy, and by the other of a pecuniary valuation of what he has lost. Such arrangements will generally be voluntary, but if there is continued discord and arrest of progress, and one party only consent, the measure must be carried out in spite of the remonstrances of the other party.

In my opinion we shall greatly injure the prosperity of the country, if we in any way stereotype or fortify the base tenure of occupancy, *as opposed to*

that of property. In a normal state of affairs the landowner and tenant will find their best interests in being on good terms: in an abnormal state the only interference, which will meet the difficulty, is that suggested above.

Minute, dated the 25th May 1866, by R. N. Cust, Esq., Junior Member of the Board of Revenue, North-Western Provinces on the proposed amendment of Act X of 1859.

Far be it from me to propose a wholesale sweep-away of rights which prescription has sanctioned, but let us not help the expansion of a state of affairs which we cannot on principle approve of. I much doubt whether the question of residence has any thing to do with the right of cultivating occupancy: *1st*, many villages have no houses within their area, and yet hereditary occupants are found there, and in Mr. Rose's Report of the Allygurh Settlement,—*vide* Mr. Muir's of May 29th, 1863, paragraph 19,—it is distinctly stated that many pyekhast cultivators have the right of occupancy. To limit therefore in future the right of occupancy to residents will be to go against a well-ascertained custom.

No. 630A., dated Nynee Tal, the 3rd August 1866.

From— R. SIMSON, Esq., *Secretary to the Government of the N.-W. Provinces*,

To—The Secretary to the Government of India, HOME DEPARTMENT.

Letter from R. Simson, Esq., Secretary to the Government of the North-Western Provinces, to the Home Department, No. 630A., dated the 3rd August 1866.

IN continuation of previous correspondence regarding the amendment of Acts X of 1859 and XIV of 1863, I am directed to forward, for the consideration of the Viceroy and Governor General in Council, the accompanying copy of a letter No. 420, dated 16th ultimo, from the Secretary to the Board of Revenue. North-Western Provinces, with a copy of the decision of the late Sudder Dewanny Adawlut, regarding the course of appeals from the decisions of Revenue officers under Act XIV of 1863, and I am to express the concurrence of the Lieutenant-Governor on the opinion of the Board as expressed in paragraph 4 of their letter.

No. 420, dated Allahabad, the 16th July 1866.

From—J. D. SANDFORD, Esq., B.A., *Offg. Secy. to the Board of Revenue, N.-W. P.*,

To—The Secretary to the Government of the North-Western Provinces.

Letter from J. D. Sandford, Esq., Officiating Secretary to the Board of Revenue, to the Secretary to the Government of the North-Western Provinces, No. 420, dated the 16th July 1866.

IN pages 1—4 of the report of selected cases determined by the late Sudder Dewanny Adawlut, North-Western Provinces, for the month of January 1866, will be found a case which involved the question of jurisdiction in appeals preferred under Act XIV of 1863 from the decisions of Revenue officers.

2. It has been held by a full bench that an appeal lies to the Judge in all suits under section 1, Act XIV of 1863, and that the restrictions as to appeals in certain descriptions of suits contained in section 153, Act X of 1859, are not applicable to suits under Act XIV of 1863. Under this ruling the Collector has no appellate jurisdiction in suits under this latter Act.

3. The fact that the draft Act for the amendment of both these Acts, prepared by the Board, contained special provision for applying section 153 of Act X of 1859 to appeals under section 1 of Act XIV of 1863, shows that a doubt (not as to the real intentions of the Legislature, but) as to the manner in which the existing Act XIV of 1859 is to be literally interpreted, had already suggested itself.

4. The Board have desired me to report this matter to Government, as an additional proof of the necessity which exists for legislative interference, as has been so frequently pressed upon the notice of the Government of India.

5. The sanction of Government is solicited to the issue of a circular order by the Board calling attention of all district officers to the decision of the full bench of the Court cited in the preceding paragraphs.

The 6th January 1866.

Present: A. ROSS, Esq., W. EDWARDS, Esq., W. ROBERTS, Esq., F. B. PEARSON, Esq., *Judges.*

Case of Bhabootee and Ramdut (Defendants), Appellants, *versus* Duleep Singh (Plaintiff), Respondent.

CASE NO. 959 OF 1865. *Special Appeal from the decision of* C. HORNE, Esq., *Judge of Mynpoory, dated the 11th July 1865.*

Bhabootee and Ramdut (Defendants), Appellants,

versus

Duleep Singh (Plaintiff), Respondent.

Case of Bhabootee and Ramdut (Defendants), Appellants, versus Duleep Singh (Plaintiff), Respondent.

Pleader of Appellants—Mahomed Basit Allee.

Pleader of Respondent—Ishree Pershad.

Plaintiff in this case, as co-sharer, sued the defendants as lumberdars in the Deputy Collector's Court, under Act XIV of 1863, for his share of the profits, amounting to Rs. 92-2-7, for the years 1269 to 1271 Fusli. The Judge in appeal, modified the decision of the Deputy Collector, and decreed in full for plaintiff (appellant). The defendants in special appeal urge the following pleas:—1st, that the claim being under Rs. 100, no appeal lay to the Judge under section 153, Act X of 1859; 2nd, that the Deputy Collector was competent, under section 58 of the Act, to re-admit the suit. In regard to the 1st plea, the Judges before whom the appeal was laid deemed it necessary to refer the question therein raised for the decision of a Full Bench. The following is their order of reference:—

Present:
A. Ross, Esq., W. Edwards, Esq., } *Judges.*

In a suit for share of profits brought by a co-sharer against the lumberdars, amounting to Rs. 92-2-7, under Act XIV of 1863, an appeal was preferred to the Judge by plaintiff. In special appeal from the Judge's decision on appeal, it is urged by defendants (appellants) among other pleas, that with reference to the provisions of section 153, Act X of 1859, and section 18, Act XIV of 1863, no appeal lies to the Judge, the amount of the suit being less than Rs. 100. On the other hand, it is contended by the plaintiff (respondent) that the suit is one under section 1, Act XIV of 1863, and not under any of the clauses of section 23, Act X of 1859, enumerated in section 153 of the said Act, and is therefore not subject to the restriction as to appeal provided by section 153 of Act X of 1859, in regard to certain descriptions of suits. There is clearly, we think, a defect in the later law—Act XIV of 1863—in omitting to lay down a distinct rule as to appeals in suits under that Act. It may, on the one hand, plausibly be urged that suits under section 1, Act XIV of 1863, being suits for balances, and therefore similar in their nature to suits under clause 4, section 23, Act X of 1859, must be held to be subject in regard to appeal to the same restrictions as suits under that clause, and therefore that the appeal in the present case must be held not to lie to the Judge. At the same time, this view cannot be upheld if the literal terms of Act XIV of 1863 be looked to.

The point being one of importance and uncertainty, we desire to have the opinion of a Full Bench on the question of jurisdiction involved. The papers in the case will be circulated as usual previous to the submission of the case to a Full Bench.

The decision of the Full Bench on the point referred was as follows:—

Present:
A. Ross, Esq., W. Edwards, Esq., W. Roberts, Esq., F. B. Pearson, Esq., } *Judges.*

After full consideration and hearing argument on both sides, we are unanimously of opinion that the restriction as to appeal in certain description of suits laid down in section 153, Act X, 1859, is not applicable to suits under any of the clauses of section 1, Act XIV of 1863. We observe that section 18 of the latter Act provides that it shall be taken and read as part of Act X of 1859, and that the said Act makes no special provision as to appeals in suits under the Act: the provisions therefore of Act X of 1859 in regard to appeals must be held to be applicable to appeals in suits under Act XIV of 1863; and, as section 153 of Act X of 1859, which excludes appeals in certain description of suits therein enumerated, does not specifically exclude appeals in suits under Act XIV of 1863, the latter description of suits must be held to lie open to appeal in all cases.

The argument, founded on analogy, would, we think, have weight if the intention of the Legislature to subject suits under Act XIV of 1863 to the restrictions laid down in section 153, Act X of 1859, even though not expressed, could be clearly inferred from the general tenor of the former Act. But we find, on referring to a draft Act for the amendment of both the above Acts, prepared by the Sudder Board of Revenue, and included among the Proceedings of the Government, North-Western Provinces, for September 1865, that the draft Act contains a section declaring the provisions of section 153, Act X of 1859, applicable to suits under section 1, Act XIV of 1863. Hence we are justified in inferring that it was not the intention of the Legislature, at the

time of passing Act XIV of 1863, to include suits under that Act among those subject to the exceptions contained in section 153, Act X of 1859, although the omission to do so may be a material defect in the original Act, due to inadvertence. On the above grounds, we are of opinion that an appeal lies to the Judge in all suits under section 1, Act XIV of 1863. We direct that this case be sent back to the referring Judges, in order that they may dispose of the remaining pleas in special appeal.

Case of Bhabootee and Ramdut (Defendants), Appellants, versus Duleep Singh (Plaintiff), Respondent.

Present:
A. Ross, Esq.,
W. Edwards, Esq., } *Judges.*

On this case being again brought before us in accordance with the direction of the Full Bench, the special appellant has represented that he does not press the second plea. The first plea having been overruled by the decision of the Full Bench, it only remains for us to dismiss the appeal with costs.

No. 513, dated Murree, 15th September 1866.

From—T. H. Thornton, Esq., *Secretary to the Government of the Punjab,*
To—*The Secretary to the Government of India*, Home Department.

Letter from T. H. Thornton, Esq., Secretary to the Government of the Punjab, to the Home Department, No. 513, dated the 15th September 1866.

In reply to your confidential letter No. 596, dated 1st August 1865, I am desired by the Hon'ble the Lieutenant-Governor to refer you to the accompaniments of my letter No. $\frac{397}{512}$, of this day's date, to the Foreign Secretary, on the subject of tenant-right in the Punjab, and to add that a further communication on the subject of the proposed amendment of Act X of 1859 will follow shortly.

No. 526, dated the 21st September 1866.

From—T. H. Thornton, Esq., *Secretary to the Government of the Punjab,*
To—*The Secretary to the Government of India*, Home Department.

Letter from T. H. Thornton, Esq., Secretary to the Government of the Punjab, to the Home Department, No. 526, dated the 21st September 1866.

In continuation of my letter No. 513, dated 15th instant, I have now the honour to submit the further communication promised therein, relative to the proposed Bill to amend Acts X of 1859 and XIV of 1863.

2. In so doing, I am desired by the Hon'ble the Lieutenant-Governor to state that, as these Acts have not been in force hitherto in the Punjab, it was at first believed that the requisition for the opinion of this Government on the proposed amendments had been sent merely because it had been sent to the Governments more directly concerned, and that no real importance was attached to obtaining the opinion of the Government of this province; but it would now appear from the subsequent receipt of a reminder, and lately by a telegraphic message, that this belief must have been erroneous; and accordingly, I am to express His Honour's regret that delay should have occurred in replying to your letter No. 596, dated 1st August 1865.

3. Having already expressed his views in regard to the general principles to be followed in disposing of the question of tenant-right in the Punjab, in his Minute transmitted with my letter No. 397, dated 15th instant, to the address of the Foreign Secretary, the Lieutenant-Governor deems it only necessary here to indicate the portions of the proposed Bill he would wish modified, if the Acts which it amends and supplements were made applicable to the Punjab.

4. *First*,—Before section 2 of the proposed Bill, His Honour would introduce a new section declaring that tenants or sub-proprietors who have heretofore enjoyed a status but little inferior to proprietors shall be held to have a right of permanent occupancy in their lands without liability of enhancement of rent; save for the reasons assigned in the 2nd or 5th cases adduced under section 6 of the Bill.

5. *Second*,—In section 2 of the Bill, His Honour would (*a*), insert the word "other" before "ryot," and would use the words "qualified right of occupancy" in lieu of "right of occupancy" where it occurs in this and other places, in regard to all except the superior class of tenants or sub-proprietors above referred to; and (*b*), after the words "cultivating or holding land" he would enter the words "at the time of the passing of this Act;" for were the rule made prospective it would, in the Lieutenant-Governor's opinion, tend to create an

Letter from T. H. Thornton, Esq., Secretary to the Government of the Punjab, to the Home Department, No. 530, dated the 21st September 1866.

injurious antagonism between proprietor and tenant-at-will, without practically benefiting the latter in any way.

6. The conditions which His Honour would annex to the right of occupancy may also be gathered from his minute above referred to, and it will suffice in this place to summarise them as follows :—

(*a*) In no case shall evictions take place without three (3) years' notice, unless by consent of tenants.

(*b*) Nor, unless the proprietor require the land for his own use or can show some other very special cause, which in the opinion of arbitrators shall be deemed valid.

(*c*) Nor, if lands be equally available, which are occupied by a tenant-at-will, or by a tenant having claims which in the opinion of arbitrators are of less force.

(*d*) When evicted, the tenant shall receive from the proprietor, besides the value of such improvements as he may have made, such compensation for the loss of occupation as may seem just with reference to the strength of his claim. The award to be made in every case by arbitration. With regard to the amount of compensation to be awarded for loss of occupation, the Legislature might, if thought advisable, fix a minimum of say from 3 to 5 years' profits, and a maximum of 10 years' profits, between which limits the arbitrators must make their award.

7. In section 6, the term "same class of cultivators" is employed, but there is nothing clearly to indicate what is meant by this. If it be intended that all cultivators having a right of occupancy, or conditional rights of occupancy, are to be regarded as on precisely the same footing in regard to rent, then His Honour would object to the provision; as infinite varieties of claims exist among these cultivators, and although, in the third case adduced, a proviso is entered that cultivators entitled to hold at a fixed rate or privileged rate shall be specially dealt with, His Honour does not consider this to be sufficient, but would, in every such case, allow some discretion, and would prefer that the decision be invariably effected by arbitration.

Under the second case, His Honour would, after the words "not less than 5 years," add "and excluding extraordinary years."

Under the fifth case adduced in this section, a general proviso is entered, that no enhancement of rent shall be claimable on account of improvements made by the cultivator; to this His Honour would add the words "unless by mutual agreement," otherwise tenants will have great difficulty in obtaining permission to sink wells, &c.

8. In section 7 it is ruled that after enhancement has been decreed, no fresh suit for enhancement shall lie until the expiration of 10 years from the date of decision; here His Honour would add the words "or if fixed at settlement for the period of settlement; or if fixed for a term of years, then until the expiration of that term" (*vide* Minute recorded by His Excellency the Viceroy).

9. By section 8 His Honour thinks farmers of sayer, abkari, and miscellaneous revenue should be enabled to recover their dues by summary suits.

10. Section 9, regarding assessment of grants made by the proprietor, would seldom or never come into operation in the Punjab; but under any circumstances His Honour would not advise its extension to this province, as he sees no valid reason why any rule should be laid down on the subject, apart from such interpretation of the grant as the Court trying such a case might deem suitable.

11. In section 19 where the expression "suit of the nature specified in section 19" is used, section 17 is perhaps intended.

12. In section 21 it is stated that the rule of limitation prescribed by section 37 of Act X of 1859 shall be in force; but as that section lays down the rate of institution fee only, His Honour apprehends the number of the section must be misquoted.

13. By section 20, the provisions of section 153 of Act X of 1859 are declared applicable, while by section 24 the provisions of that section are repealed, and yet in section 30 these provisions appear to be revived. This seems to require explanation.

14. In section 34, where it is mentioned that section 17 may be modified by the local Government unless section 17 of Act X of 1859 be intended, it is not apparent what is the object in view.

15. Lastly, His Honour would strongly recommend that a section be added empowering the local Government of this province, when extending the Acts to the Punjab, to extend them *with such modifications and restrictions as to procedure* as may be deemed desirable or necessary.

Letter from T. H. Thornton, Esq., Secretary to the Government of the Punjab, to the Home Department, No. 526, dated the 21st September 1866.

No. 3411, dated the 4th October 1866.

From—L. R. TOTTENHAM, Esq., *Registrar of the High Court of Judicature at Fort William in Bengal,*

To—*The Secretary to the Government of India,* HOME DEPARTMENT.

Letter from L. R. Tottenham, Esq., Registrar of the High Court, to the Home Department, No. 3411, dated the 4th October 1866.

With reference to your office letter No. 3928, dated the 23rd August last, I am directed to state that Mr. Officiating Secretary Cust's letter, No. 7019, dated the 23rd December 1864, was received at a time when the Chief Justice was in England. That letter was laid before the Chief Justice after his return, and, on the 1st July 1865, he recorded and circulated to the Judges of the Court the following minute and rule:—

Minute.—"The letter of the 23rd December 1864, from the Officiating Secretary to the Government of India, Home Department, No. 7019, was handed to me after I returned from England in February last. I found that in a case which came before Mr. Justice Campbell and Mr. Justice Elphinstone Jackson after the receipt of that letter, questions were raised for the decision of a Full Bench as to the principle to be observed in fixing the amount of rent to be paid by a ryot having a right of occupancy in consequence of an increase in the value of the produce of the land.

"Agreeing fully in the views expressed by His Excellency the Governor General in Council in paragraphs 4 and 5 of the letter above mentioned, I immediately requested all the Judges of the Court to sit for the purpose of deciding the questions. The case has been argued, and the Judges have delivered their judgments, of which printed copies will be forwarded for the information of His Excellency the Governor General in Council. Copies should also be sent to His Honour the Lieutenant-Governor of Bengal and to the Board of Revenue of the Lower Provinces.

"At the time when the questions involved in the Rent case were under consideration, it was verbally arranged that for the future the practice which had been adopted after the receipt of the letter above referred to should be continued, and that whenever a case should come before one Division Court, and that Court should differ from the decision of another Division Court upon a point of law, the case should be referred for the decision of a Full Bench. But I think it will be advisable to pass a rule to the effect suggested in paragraph 7 of the Government letter, with this modification that, instead of every such case being argued before the whole Court, it should be argued before a Court consisting of not less than five Judges.

"To have every case of the kind argued before all the Judges would interfere so much with the discharge of the other duties of the Judges, that I think it would be almost impossible to get through the business of the Court; many of the cases may involve points of minor importance as to which the decision of five Judges would be quite sufficient. The rule which I propose would enable the Chief Justice to appoint a Court consisting of all the Judges or of a majority of them or of any number not less than five, having regard to the nature and importance of each case.

"A decision of the Full Bench should have the same effect as a decision of the Exchequer Chamber in England.

"I propose that the annexed rule be adopted. If adopted, the Government may be informed in answer to paragraph 7 of their letter that the rule has been passed, and that legislation is not considered necessary.

The rule proposed was as follows:—

Rule.—"Whenever one Division Court shall differ from any other Division Court upon a point of law or usage having the force of law, the case shall be referred for decision by a Full Bench.

"If the question arise in a Special Appeal, the Court referring the case shall state the point or points upon which they differ from the decision of a former Division Court, and shall refer the appeal for the final decision of a Full Bench.

"If the question arise in a Regular Appeal, the questions of law shall alone be referred, and the Full Bench shall return the case with an expression of its opinion upon the points of law, for final adjudication by the Division Court which referred it, and, in case of necessity, in consequence of the absence of any or either of the referring Judges, for the ultimate decision of another Division Court.

"Every decision of a Full Bench shall be treated as a conclusive authority upon the points of law or usage having the force of law determined by the Full Bench, unless it be reversed, or a contrary rule be laid down by the Judicial Committee of the Privy Council.

Letter from L. R. Tottenham, Esq., Registrar of the High Court, to the Home Department, No. 3411, dated the 4th October 1866.

"A Full Bench shall consist of not less than five Judges."

2. Several of the Judges raised objections to the proposed rule, and various discussions have from time to time been held on the subject of it. I am, however, now directed to state that the rule as proposed has been agreed to by the majority of the Judges, and that, in the opinion of the Court, legislation will not be necessary.

3. I am directed to remark that, pending the discussions, the proposed rule has been acted upon, and that no practical inconvenience has arisen from its adoption. Should any difficulty hereafter arise which may render legislation upon the subject imperative or advisable, the Court will cause a further communication to be made to His Excellency the Governor General in Council.

Nos. 466 & 467, dated the 16th January 1867.

From—E. C. BAYLEY, Esq., *Secretary to the Government of India*, HOME DEPT.,
To—*The* HON'BLE J. E. L. BRANDRETH *and* C. P. HOBHOUSE.

Letter from E. C. Bayley, Esq., to the Honourable J. E. L. Brandreth and C. P. Hobhouse, Nos. 466 and 467, dated the 16th January 1867.

I AM desired to send you the papers noted below, with reference to a Bill to amend Act X of 1859 drafted by the Honourable Mr. Muir and circulated for the opinion of local Governments and Administrations in August 1865.

The Governor General in Council would be obliged by an early expression of your opinion, not on the principles of policy on which the Bill is founded, but upon the probable practical working of such a Bill if passed into law.

List of Enclosures.

Minutes by the Judges of the High Court on Act X of 1859.
Legislative Proceedings, May 1864, Nos. 9-12.
" " July 1864, Nos. 4-7.
" " January 1865, Nos. 7-20.
Copy of Mr. Muir's amended draft Bill to amend Act X of 1859 with Statement of Objects and Reasons.
Circular to local Governments, dated 1st August 1865.
Reply from Central Provinces, Nos. $\frac{3433}{3807}$, dated 1st September 1865.
Reply from Madras, No. 2222, dated 15th September 1865.
" Bombay, No. 4490, dated 31st October 1865.
" Punjab, No. 526, dated 21st September 1866.
" Bengal, No. 2065T., dated 9th September 1866.
" North-Western Provinces, No. 1156A., dated 8th December 1865.
" " " No. 315A., dated 5th May 1866.
" " " No. 491A, dated 26th June 1866.
" " " No. 630, dated 3rd August 1866.

Dated the 13th February 1867.

From—*The* HON'BLE J. E. L. BRANDRETH,
To—*The Secretary to the Government of India*, HOME DEPT.

Letter from the Honourable J. E. L. Brandreth, dated the 13th February 1867.

I HAVE the honour to acknowledge the receipt of your No. 466, dated 16th January last, in which my opinion is requested with reference to the probable practical working of Mr. Muir's Draft Bill for the amendment of Act X of 1859.

2. If this enquiry were made of a Civil Officer who had been employed in the North-Western Provinces or Bengal, he would answer it with reference to his experience of the working of Act X, and by showing whether the amendments proposed by Mr. Muir would meet the purpose intended by them or not. But Act X has never been introduced into the Punjab, in which province the only knowledge that I possess of the land tenures of India has been acquired. I am not able, therefore, to give any opinion on Mr. Muir's Bill from this point of view.

3. All I can do with reference to my own experience is to give my opinion whether, in accordance with the power given in the concluding sections of Mr. Muir's Bill, Act X of 1859, the amending Act XIV of 1863, and Mr. Muir's proposed further amending Act, should all of them in their entirety be

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introduced into the Punjab, and I have no hesitation in stating my decided opinion that these Acts ought not to be thus extended to the Punjab.

4. In accordance with existing procedure, all suits of the kind contemplated by Act X are heard on the Civil Side of the Courts. To transfer these suits to the Revenue Side of the Courts, which is all that it would amount to if the procedure of Act X were introduced instead (for the Civil and Revenue Courts are not, as in the North-Western Provinces, presided over by different Officers) would be, in my opinion, unnecessary and inconvenient, especially with reference to such sections as 18, 19 and 20 of Mr. Muir's Bill by which certain classes of suits are made cognizable both in the Civil and Revenue Courts, and provisions are made under certain circumstances for such suits being stayed in the Revenue Courts and transferred to the Civil Courts.

5. What I have here stated appears to be a sufficient answer to any enquiry as to the practical working of Mr. Muir's Bill, so far as it can be considered as applying to the Punjab. Perhaps, however, I ought to consider the other portions of Act X and its amending Acts with a view to determine, though no provision is made to this effect in Mr. Muir's Bill, whether, instead of introducing these Acts in their entirety, any portions of them are suitable to and ought to be extended to the Punjab.

6. First, as regards the much controverted section 6 of Act X about the right of occupancy of ryots, as amended by sections 2 and 3 of Mr. Muir's Bill. Most Settlement Officers in the Punjab came, I believe, to the conclusion that, as a rule, the village proprietors had no clearly recognised right under former Governments to oust at their pleasure those other cultivators, by whatever name they were known, who were not among the original founders of the village, or whose title to the land they cultivated was of a less complete nature than that of what was usually called the proprietary body to the land which they cultivated, and, therefore, a term of years was fixed on. In some districts it was 12 years, in others 20, or more, according to the time that had elapsed since the annexation of the country, or for other reasons; or it varied with reference to different classes of cultivators. These non-proprietary cultivators, as they were called, who had cultivated the land for the term fixed by the Settlement Officer, were held to have acquired rights of occupancy, and these rights were guaranteed to them in the settlement record with the consent of the proprietary body. No doubt some mistakes, perhaps many, were committed; in some parts of the country the proprietary body may have had more decided powers of ejectment than was supposed; and where a non-proprietary cultivator paid his rent direct to a particular proprietor, instead of to the State, it is doubtful, perhaps, whether it ought to have been held that he could ever acquire right of occupancy. I believe, however, I have correctly stated what was the general idea of Settlement Officers on the subject, and under which they acted; it was absolutely necessary to come to some understanding on the subject at the time of settlement. In the earlier settlements, where money assessments had only been introduced for a short time, in some parts of the country, the non-proprietary cultivators would all have deserted, it is my belief, if they had been told that the proprietors could turn them out whenever they pleased. The decisions of the Courts also, I believe, have been invariably in accordance with the settlement record.

7. The arrangements made at settlement were no doubt somewhat arbitrary, but to substitute for them the period fixed by Mr. Muir's Bill, as conferring a right of occupancy, would be still more arbitrary, for it would be without the guarantee of the proprietary body which was given for the other period; it would be opposed to the long-continued course of judicial decisions, and besides it would often be injurious to the interests of the proprietary body, a longer period than 12 or even 20 years having elapsed up to the present date since most of those cultivators who were recorded as tenants-at-will at settlement first acquired possession of the lands cultivated by them.

8. The provisions of Mr. Muir's Bill also, by which cultivators who were recorded as tenants-at-will at settlement, and ever since settlement in the annual papers prepared by the Village Accountant, will be able, by mere lapse of time, to acquire right of occupancy, are quite opposed to all ideas that have hitherto

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prevailed on the subject in the Punjab, and to the decisions of the Courts. These provisions will, of course, be still more opposed to the views of the Settlement Commissioner of the Punjab, Mr. E. Prinsep, who maintains apparently that, with a few exceptions, there are no ryots in the Punjab who have rights of occupancy.

9. Next, as regards section 17 of Act X modified by section 6 of Mr. Muir's Bill. Some of the rules here prescribed for the enhancement of rent may be applicable to the Punjab, but that rule by which the rent demandable from ryots with right of occupancy may be raised to within 12½ per cent. of what is paid by mere tenants-at-will would not be at all suitable to the Punjab. There are a vast number of so-called non-proprietary cultivators who have always paid rent direct to the State, and many of whom have never paid anything to the nominal proprietors. To assess such men at the same rate as those who have hitherto paid in kind to particular proprietors would be quite out of the question.

10. It is true that, in the concluding section of Mr. Muir's Bill, power is given to the Local Governments to modify any portion of sections 6 and 17 of Act X that it may think proper, but this is cutting away the principal ground-work of the Bill. What will be the use of the Bill if the most material portions of it may thus be set aside? If legislation on the subject is required at all, it seems to me that all the points requiring legislation should be carefully considered and embodied in a Bill, and not that the sole power should be given to any Lieutenant-Governor to make what laws he pleases on the subject by merely publishing them in the Official Gazette.

11. Section 19 of Act X is amended by section 4 of Mr. Muir's Bill; this refers to the period at which land may be relinquished by a ryot. He must give three months' notice before the mouth of Jeth; but all that is necessary in this matter, I believe, has been provided for according to the custom of the country in the settlement papers. In some parts of the Punjab, if I remember right, it is usual for land to be relinquished after the autumn harvest, therefore to prescribe by law a new period would not be advisable.

12. There are other portions of Act X and its amending Acts which also appear to me unsuited to the Punjab; but what I have already said will, perhaps, suffice to show that it would not be desirable to give power (though this is not given by Mr. Muir's Bill)—to extend portions of these Acts to the Punjab, with any idea that such a provision would answer all that is required. If legislation is necessary at all, it is evident to me that there ought to be a separate Bill for the Punjab.

13. But whether legislation is required or not, is a question that I should not like to answer in any decided manner at this distance from all sources of information on the subject. It seems to me that the Punjab Government ought to be asked to prepare a Bill if they require one. It would not be necessary to legislate for any matters that were in accordance with well-established custom, nor which had been provided for in a satisfactory manner at the settlements, where such provisions had been subsequently maintained by the Courts.

14. Where there are errors in the settlement decisions which affect only an individual here and there, these are best rectified by a regular suit; but where the errors are such that they affect a very large class of persons, the proper remedy is to revise the settlement record, either when a new settlement takes place, or at such other period as the Government may consider necessary; but this should only be allowed on the clearest evidence beforehand that the alleged errors really exist, and special care should be taken when the alleged errors are such as affect not merely a particular district, but the whole Province. If the opinion of the majority of the Committee which assembled at Lahore to consider the proceedings of the Settlement Commissioner in regard to the tenant-right question was correct, then the revision of the records of former settlements in this respect in the Umritsur Division was impolitic, and will probably cause much trouble hereafter to the whole country: for not only may the 10,000 persons whose cultivating status Mr. Prinsep is said to have altered file their suits in the Umritsur Courts, but ten times 10,000 suits may be instituted in other parts of the Punjab, where settlement operations

are not going on by landlords, for the purpose of having the settlement records amended upon the point of tenant-right.

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15. There may be, however, some points in which previous custom requires to be altered, or about which there may be doubt as to what the custom really was. It may be desirable, for instance, to give non-proprietary cultivators better rights of improving their lands by sinking wells, &c., than they at present possess, and also to allow them to sell their lands subject to the payment of such compensation to the proprietor on account of his claims as may be fairly due to him; and in case Mr. Prinsep's proceedings in the Umritsur Division are approved of, the right of occupancy, if any remain in accordance with his views, ought to be defined by law; but, as before suggested, a Bill on the subject, if required, ought to be prepared in the Punjab.

16. But, perhaps, I ought to infer from your letter that even, though I have had no experience of the working of Act X, my opinion should be given upon the papers sent to me whether Mr. Muir's Bill appears desirable.

17. On this view of the case, I would first remark that Mr. Muir intended his Bill especially for the North-Western Provinces, to which part of India the other amending Act XIV of 1863 alone applies. He does not appear to have been by any means so certain that his Bill would be equally applicable to Bengal, and it does not follow that because his Bill would not suit Bengal, it would not suit the North-Western Provinces. Most of the Bengal ryots would have been proprietors, I imagine, if they had belonged to the North-Western Provinces, and, therefore, the claims of the proprietary body in the North-Western Provinces appear to be of a very different nature to those of the more newly created zemindar proprietors in Bengal. Both the Lieutenant-Governor of Bengal and the Bengal Board of Revenue have so many objections against Mr. Muir's Bill, that the word Bengal ought, I think, to be struck out of the concluding section of the Bill; and the same, I think, as regards the extension of the Bill to the Punjab.

18. I shall consider the Bill, therefore, in my further remarks on it, as mainly, if not entirely, relating to the North-Western Provinces; nor from your letter would it appear that I was required to consider the principles of the Bill at all, but only its practicable working. Considerations, therefore, of such questions as to whether there is any sufficient reason for amending section 6 of Act X at all, or even whether a continued holding of say 30 years, without regard to the land having been inherited, or otherwise, would not be a better test than Mr. Muir's tests for the rights of occupancy, hardly appear to be within the scope of the reply which I am expected to submit.

19. From this more limited point of view, then, I have only one suggestion to make with regard to section 2—the right of occupancy section—which is probably the most important part of the Bill. By this section every ryot holding land, which has descended to him by inheritance, has a right of occupancy if the possession has lasted for 20 years; but it appears that, in some parts of the North-Western Provinces, a cultivator sometimes transfers his right to another person, and the practice may become more current, and it is desirable that it should not be discouraged where the landlord allows it. In my opinion such a transferee ought to be able to acquire a right of occupancy within the same period, and on the same terms, as a person who succeeds by inheritance, and that for the same reason as is given by Mr. Muir in his "Statement" regarding land acquired by inheritance, for the transfer would indicate quite as much, as the succession of an heir, the landlord's acquiescence in the title thus acquired. It would also be necessary, I imagine, to provide that this section should be read as part of Act X, otherwise the time fixed for the commencement of suits under that Act might not apply.

20. As regards section 6 of Mr. Muir's Bill modifying section 17 of Act X, I have only to remark regarding Case III, where hereditary cultivators may be assessed at 12½ per cent. lower than tenants-at-will. This rate appears to me too arbitrary; besides, I don't see what is the use of fixing any rate at all which is liable to be set aside by the Courts on almost every conceivable ground under the provisos which follow. It seems to me that if it is not desirable to cancel section 17 of Act X entirely without substituting anything in its place, that Case III should be to the effect that the rent paid by such cultivators is not fair and equitable with reference to the relative rights of pro-

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prietors and cultivators, and to the circumstances under which the cultivators acquired possession of their land, and to their former position with reference to the landlord. If some way like this was opened for adjusting rights, a good deal might be effected at the revision of a settlement, and by the decision of the Courts and by private arbitration. I don't think Mr. Muir's rule, qualified as it is by the provisos, would prevent litigation; whereas it might interfere with the adjustment of the rent on less arbitrary grounds. This Case III also seems objectionable on other grounds, for apparently it is only applicable when no prevailing rate is ascertainable under Case I; but it is the prevailing rate itself that may be unreasonable and requiring alteration, and there should surely be some means provided of effecting this.

21. Regarding the appeal sections 24—33, the only remark I have to make is with reference to section 30, that it does not seem desirable that the Board of Revenue should have the power of passing such orders as they may think proper in cases subject to special appeal to the High Court.

22. I think also the Bill will require a good many verbal alterations and amendments before it can be passed.

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